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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1971

No. 71-274

Winston-Salem/Forsyth County Board of Education,

Petitioner

v.

Catherine Scott, et al,

Respondents

****

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

****

APPENDIX TO PETITION
FOR WRIT OF CERTIORARI

****

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IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

WINSTON-SALEM, NORTH CAROLINA

No. C-174-WS-68

CATHERINE SCOTT, et al,
Plaintiff

vs.

WINSTON-SALEM/FORSYTH COUNTY BOARD OF EDUCATION, a public body corporate; BOARD OF COUNTY COMMISSIONERS OF FORSYTH COUNTY, a public body corporate; NORTH CAROLINA STATE BOARD OF EDUCATION, a public body corporate; and DR. A. CRAIG PHILLIPS, North Carolina State Superintendent of Public Instruction,
Defendants

MEMORANDUM AND ORDER

GORDON, District Judge

The plaintiffs in the complaint filed in the cause allege that the public schools in the Winston-Salem/Forsyth County Administrative Unit are operated on a racially discriminatory basis in that, among others, attendance zones are gerrymandered to promote discrimination; teachers are assigned to schools where the majority of the students are of the teachers' race, school bus routes are established to perpetuate segregation school lunch programs are operated on a discriminatory basis both as to quantity and quality, discriminatory practices are engaged in through the hiring of teachers special schools are established to favor whites, vocational schools are established to favor whites, curricula of the Negro schools are inferior to white and parking facilities at Negro schools are inferior to white. Succinctly, it might be said that it is contended that in all respects a dual system is being operated. Generally, the prayer of the complaint requests the complete desegregation of the schools and for preliminary and permanent relief.

The action was instituted on October 2, 1968. Following the filing of the

complaint, on November 19, 1968 plaintiffs moved to amend the complaint. This motion was allowed. Again on January 13, 1969, the plaintiffs moved to amend the complaint. This motion was denied. Discovery by the parties ensued promptly and several motions, including motions for summary judgment by the defendants other than the Winston-Salem/Forsyth County Board of Education, and objections were filed.

On December 17, 1969, the plaintiffs filed a motion for preliminary injunction. Prior to the filing of the motion no request, other than the usual request contained in complaints filed in this type action, was made to the Court to hear the matter regarding the issuance of a preliminary injunction. Faced with a heavy schedule of cases already set for trial, but nevertheless feeling that the hearing of the motion should be given some priority, Court schedules were rearranged and the hearing on the motion began January 9, 1970. At the conclusion of the day on January 9, 1970, the hearing was recessed to begin again January 21, 1970. The hearing was concluded on January 27, 1970. On February 17, 1970, the plaintiff's motion for preliminary injunction was denied by an order of the Court containing findings of facts

and conclusions of law. Since all the evidence presented at the hearing on the matter of the preliminary injunction is germane to the resolution of issues now before the Court, those findings of facts contained therein will be repeated and expounded upon in this memorandum opinion.

The Court and counsel realizing the urgency for consideration of the issues raised, expedited the hearing of the matter on the merits with full cooperation of counsel representing all parties by dovetailing hearing days on rather short notice into already established court calendars. The hearing on the merits was concluded on April 30, 1970, at which time briefing schedules were established. The record of the hearings is voluminous, consisting of 1,334 pages of transcript and 128 exhibits. The hearings on the preliminary injunction motion and merits lasted nine days.

The Court having considered the evidence presented, briefs and arguments of counsel, makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The Consolidated System

Prior to 1963 there were two school systems in Forsyth County. The Winston-Salem School Administrative Unit had jurisdiction over all schools within the corporate limits of the City of Winston-Salem. The Forsyth County School Administrative Unit had jurisdiction over all schools in Forsyth County outside the corporate limits of the City of Winston-Salem. Pursuant to a special act of the General Assembly (Chapter 112, 1961 Session Laws) and by vote of the people of Forsyth County, the two systems were consolidated as of July 1, 1963.

2. Geographical and Statistical Data

The Winston-Salem/Forsyth County Board of Education has jurisdiction over and is responsible for the operation of all public schools in Forsyth County, North Carolina. Forsyth County is roughly rectangular in shape, its longest North-South dimension being about 20 miles. It comprises 424 square miles. The estimated current population of the County is 235,000, of whom approximately 22.5% are non-white. Winston-Salem, the principal city in Forsyth County, comprises 57.5 square miles; it is located in the south-central part of the County and has an estimated current population of about

152,000. Other communities in Forsyth County include: Kernersville, an incorporated town, population about 4,200, located about ten miles east of Winston-Salem; Walkertown, unincorporated, population about 1,240, located northeast of Winston-Salem; Rural Hall, unincorporated, population about 1,500, located about 10 miles north of Winston-Salem; Lewisville, unincorporated, located northwest of Winston-Salem; and Clemmons, unincorporated, population in excess of 2,000, located about 10 miles west of Winston-Salem. Most of the black population of the County resides in the northern, eastern, and to some extent, southern portions of the City of Winston-Salem. Less than 10% of the County's population, outside the City of Winston-Salem, is black.

There are 67 schools in the Winston-Salem/Forsyth County System. Of these, 42 are elementary schools, 15 are junior high schools and 10 are senior high schools. Two of the elementary schools, the Children's Center and The Children's Home, are privately owned and operated. The Winston-Salem/Forsyth County School System provides faculty for these two schools. As of December 19, 1969, there were 50,455 students and

2,099 full-time members of the teaching staff in the Winston-Salem/Forsyth County School System. Of these students, 36,521 (72.5%) were white, 13,879 (27.5%) were Negro, 35 were Indian, 13 were Oriental and 7 were Spanish. Of the faculty 1,535 were white, 561 were Negro, 1 Oriental and 2 Spanish.

The following is a chart showing the name and racial make-up of the schools in this System as of December 19, 1969:

TABLE I

Elementary Schools

Name of School	Students Negro	White	Total	Percentage of Negro Students
Ardmore	7	588	595	1.18%
Bolton	1	520	521	.19%
Brown	663	0	663	100.00%
Brunson	135	544	679	24.82%
Carver Crest	477	0	477	100.00%
Carver	706	3	709	99.58%
Children's Center	4	46	50	8.00%
Children's Home	0	180	180	0%
Clemmons	14	973	987	1.42%
Diggs	609	0	609	100.00%
Easton	146	191	337	43.32%
Fairview	693	0	693	100.00%
Forest Park	20	647	667	3.00%
14th Street	583	0	583	100.00%

Griffith	0	1020	1020	0%
Ibraham	0	361	361	0%
Kernersville	36	1116	1152	3.13%
Kimberley Park	778	0.	778	100.00%
Konnoak	1	550	551	.18%
Latham	7	419	426	1.64%
Lewisville	29	602	631	4.60%
Lowrance	726	12	738	98.24%
Mebane	504	0	504	100.00%
Mineral Springs	48	833	881	5.45%
Moore	0	439	439	0%
North Elementary	689	0	689	100.00%
Oak Summit	30	657	687	4.37%
Old Richmond	41	309	350	11.71%
Old Town	99	1189	1288	7.61%

Petree	49	281	330	14.85%
Rural Hall	50	871	921	5.43%
Sedge Garden	7	939	946	.75%
Sherwood Forest	1	822	823	.12%
Skyland	483	0	483	100.00%
South Fork	2	691	693	.29%
South Park	4	536	540	.74%
Speas	2	997	999	.20%
Union Cross	3	659	662	.45%
Vienna	12	423	435	2.76%
Walkertown	91	917	1008	9.03%
Waughtown	0	360	360	0%
Whitaker	7	608	615	1.14%

* * * * * *

Junior High Schools

Anderson	517	0	517	100.00%

Carver	240	0	240	100.00%
Dalton	0	831	831	0%
Glenn	2	771	773	.26%
Griffith	0	525	525	0%
Hanes	500	13	513	97.47%
Hill	41	530	571	7.18%
Jefferson	1	815	816	.12%
Kennedy	1042	1	1043	99.90%
Kerners-ville	24	500	524	4.56%
Mineral Springs	28	890	918	3.05%
Northeast	107	960	1067	10.03%
Paisley	552	0	552	100.00%
Philo	19	638	657	2.89%
Southwest	19	1248	1267	1.50%
Walkertown	45	622	667	6.75%
Wiley	183	626	809	22.62%

Senior High Schools				
Anderson	402	0	402	100%
Atkins	1135	0	1135	100%
Carver	240	0	240	100%
East	65	1474	1539	4.22%
Mt. Tabor	1	1219	1220	.08%
North	305	1461	1766	17.27%
Parkland	61	1461	1522	4.01%
Reynolds	255	1458	1713	14.89%
West	23	1056	1079	2.13%
Continuing Education	53	9	62	85.48%
Central Rehabilitation Center	186	166	352	52.84%

During the 1969-1970 school year, of the 67 schools in the system, there are 9

all-black elementary schools, 1 all-black junior high school and 3 all-black senior high schools. There are 5 all-white elementary schools, 2 all-white junior high schools and no all-white senior high schools. In the 49 schools in which there is some degree of racial mix, it runs the gamut from schools with 1 white and the rest black to schools with only 1 black and the rest white. The 49 schools also include those (Skyland, North Elementary, Hanes Junior High and Lowrance) which were formerly all-white and which are now black or predominantly black because of the change in the residential patterns of the neighborhood served by the school.

3. History of Pupil Assignments by the Local Board.

Winston-Salem, Charlotte and Greensboro were the first communities in North Carolina to admit a Negro child to a formerly all-white school. This was done in 1957. In that year one child transferred to Reynolds High School. During the years that followed, the number of Negro pupils attending formerly all-white schools as a result of the approval of requests for such transfer were as follows:

1958	4
1959	8
1960	10
1961	18
1962	44

Beginning in 1963 the idea prevailed that desegregated school systems should no longer keep official records of a pupil's race. As a result the number of pupils by race is not available for 1963 and 1964. Since 1965, HEW has required such information, and the information has been obtained from the principal of each school in order to comply with their requirement; the HEW reports, which are the only racial records available since 1965, show that the number of black students attending predominantly white schools in years subsequent to 1964 were:

1965	509
1966	1246
1967	1486
1968	2155
1969	2016

Blacks also attend schools which are predominantly black, but not all black. For example, in the current school year (1969-70), there are 3,160 blacks attending such schools, in which the total number of white students is 193.

As can be seen, the number of children attending desegregated schools has steadily increased through the years. After the passage of the Civil Rights Act of 1964, the school system consistently adhered to guidelines set up by the Department of Health, Education and Welfare. HEW representatives visited the school system and approved the system's desegregation plans and attendance area maps on each occasion until litigation ensued when, by reason of the school system's involvement in litigation, the submission of plans was not required.

The integration achieved during the years 1965-1969 resulted primarily from three things:

A. Elimination of the only remaining overlapping attendance zone and of the only remaining overlapping bus route. (Carver School had been built to accommodate all Negro children (grades 1 through 12) in Forsyth County who resided outside Winston-Salem. Prior to 1965 those who desired to do so were permitted to continue at Carver with school bus transportation being provided for them. By 1965 Carver School was given specific, non-overlapping attendance zone lines and school bus transportation from outside the Carver zone was discontinued.)

B. Establishment of a geographic attendance zone plan, with free choice of transfer. Under this plan, which was approved by HEW, each child was assigned to the school in the zone in which he lived. This would normally be the school nearest where he lived. Then every child was given the privilege of transferring to any other school in the system, so long as there was room to accommodate him. No transportation was afforded. The capacity of each school was predetermined. Under the regulations, if there were more applicants than could be accommodated, priority was given on the basis of the proximity of the child's residence to the school. And any child who could not be accommodated at the school of his first choice, could go to some other school, of his own choosing, where there was room available. Plaintiffs do not contend that any child has been denied the privilege of transferring to a school of his choice; in fact certain of the plaintiffs have done so.

C. Closing of Paisley High in 1968 and redrawing attendance boundary lines so as to assign its pupils to North Forsyth and Reynolds (predominantly white) and to Atkins (black) with the beginning of the 1968-69 school year.

Furthermore, in March, 1968, the voters of the Winston-Salem/Forsyth County Administrative Unit voted 24.8 million dollars in bonds for school construction and equipment. Initial projects proposed for the use of this money would have resulted in approximately 1,475 Negro students being reassigned to predominantly white schools. Pending litigation against the School Board caused a loss of marketability of these bonds, and consequently, these plans have had to be delayed. An offer by the School Board to the plaintiffs to spend the proceeds only after Court approval was rejected.

4. The Predominantly Black Schools

TABLE II

Name of School	Date of Initial Construction[1]	Percentage of Negroes in Attendance Zone
Brown	1914	90-100%
Carver Crest	1950	90-100% (encompasses part of a census tract which is 20-29.
Diggs	1953	80-89.99%

airview[3]	1962	90-100%
4th Street	1922	90-100%
imberly Park	1925	90-100%
owrance[4]	1955	90-100% (encompasses part of a census tract which is 0-9.99%)
ebane	1928	80-89.99%
orth[5]	1923	90-100% (contains part of a census tract which is 80-89.99%)
kyland[6]	1923	90-100% (contains part of a census tract which is 30-39.99%)
arver	1950	90-100% (contains part of a census tract which is 10-19.99%)
nderson	1958	80-89.99%
anes[7]	1930	90-100%

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Kennedy	1963	90-100%
Paisley	1957	90-100% (cont: part of a cen: tract which i: 20-29.99%)
Atkins	1930	90-100%

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1 These are the dates when the first constructi on the particular site. In most cases additional construction has taken place since the date which has been noted. For example, Kimberly Park was destroyed by fire and was completely rebuilt on the same site in 1966.

2 This data was obtained by the use of Plaintif Exhibits No. 29 and 42.

3 Prior to 1960, this school had an all-white student body.

4 Approximately four years ago, this neighborho and school were predominantly white. There was a rapid transition to black for two years but this has since slowed down.

5 This school was predominantly white until 196

6

This school was predominantly white until the 1940's.

7

Until 1965 this was a predominantly white junior high school. Then, over a period of about three years, it shifted to predominantly black.

The geographic attendance zone for Diggs Elementary School (609 black and 0 white) is bordered on the west by the attendance zone for Latham Elementary School (7 black and 419 white); on the south by a section of the South Park Elementary zone (4 black and 536 white); and on the east by a small section of the Forest Park Elementary zone (20 black and 647 white). These lines as they are drawn are not arbitrary. The boundary line dividing Diggs and Latham is Main Street (Highway 52) which is a divided four lane thoroughfare which is heavily traveled and constitutes a hazardous area, particularly during the morning rush hours. The southern and eastern boundaries of Diggs, separating it from South Park and Forest Park, run through an industrial area which is approximately three blocks wide. Generally, Diggs serves a housing project which is located close to the school. This is a thickly populated, small zone and access from without the zone would be difficult

without the construction of structures to overcome the obstructions.

Both Carver Crest (477 black and 0 white) and Kimberly Park (778 black and 0 white) are bordered to the west by the Brunson zone (135 black and 544 white). The western boundary of Carver Crest runs along the property of the Methodist Children's Home; this property is mostly undeveloped and has no roads passing through it. The western boundary of Kimberly Park runs along the northern sector of the Brunson district. This particular area within the Brunson district supplies Brunson with a very small part of its pupil population. It contains a golf course and a business district, as well as a sparsely inhabited residential area in which there are few children. Also contained in this northern sector is the acreage of the Children's Home.

Mebane Elementary (504 black and 0 white) is bordered on the east and part of the south by Forest Park (20 black and 647 white). The southern portion is marked by a railway. The eastern border has been established along Stadium Drive (Highway 311 and 109) which is a major access route into the city. This is a four lane, undivided thoroughfare.

Forest Park also borders the southern portion of the Skyland Elementary district (483 black and 0 white). This boundary is drawn along the Southern Railway lines and on both sides of the railroad there is light to medium industry. Skyland is bordered on the east by the Petree Elementary district (49 black and 281 white). This line follows roughly the old city limits (Skyland was a part of the city system and Petree was a part of the county system until consolidation in 1963). The area through which the line runs is not well developed. The Petree district has been redrawn under the School Board's plan which will be dealt with later in this opinion. Skyland, as has been noted previously, was at one time an all-white school.

Lowrance Elementary (726 black and 12 white) is bordered on the north by the Mineral Springs (48 black and 833 white), Oak Summit (30 black and 657 white), and Ibraham (0 black and 361 white) district. As was noted previously, the Lowrance district has changed generally from white to black in the last four years. The district lines have not been changed in that time. Since these two districts are modified by the School Board's proposed Pupil Assignment Plan for 1970-71, this general area will be dealt with under the Court's discussion of that plan.

The same will be done with the Carver district, which has been extensively revamped under the Board's plan for 1970-1971.

The Brown Elementary zone (663 black and 0 white) borders on the southwest portion with that of Brunson Elementary (135 black and 544 white). This line is drawn through the heart of the Winston-Salem business district and there are few, if any, students living in this area.

North Elementary (689 black and 0 white) is surrounded on all sides by the zones of predominantly or all-black schools, with the exception of a small part of the southwest border which is contiguous with the Brunson zone. The neighborhoods are black on both sides of this line.

Fairview Elementary (693 black and 0 white) and Fourteenth Street Elementary (583 black and 0 white) are totally surrounded by other predominantly black or all-black schools.

Anderson Junior-Senior High (943 black and 0 white--approximately 400 senior high students) has previously encompassed and been fed by the Mebane Elementary and Diggs Elementary zones. Under the Board's

proposed pupil assignment plan for 1970-1971, the senior high school would be discontinued and the structure would be used for a junior high school only. The junior high school zone would be left intact and the projected enrollment figures are 541 black and 0 white.

Paisley Junior High School (552 black and 0 white) is presently being fed by the Kimberly Park and Carver Crest schools. It borders the Wiley Junior High zone (183 black and 666 white) which includes Brunson Elementary. For a description of the boundary lines see the discussion under the elementary schools.

Hanes Junior High School (500 black and 13 white) is being fed by Lowrance and North elementary schools. Until around 1964 or 1965, this was a predominantly white school. The shift to predominantly black was a gradual one over a three year period.

Kennedy Junior High School (1042 black and 1 white) is fed by Brown, Fairview, Fourteenth Street, and Skyland elementary schools. Kennedy is located close to Brown Elementary and is completely surrounded by all black neighborhoods.

The Carver Junior High zone has been

extensively modified under the Board's proposed plan for 1970-1971 and will be discussed at a later point in the opinion.

There were during the 1969-1970 school year three predominantly black senior high schools. Two of these, Carver and Anderson, also contained junior high school plants within the same building. Under the Board's proposed plan for 1970-1971, the senior high school operations in both these schools would be discontinued, thus leaving only one all-black senior high school in the system. That would be Atkins (1135 black and 0 white) which is being fed totally by Kennedy Junior High. Atkins, as Kennedy, is located in a heavily populated, all-black section of the city.

All sixteen of these predominantly or all-black schools in operation during the 1969-1970 school year were compacted in an area 3 1/2 miles at its widest point and 5 miles at its longest point. This area encompasses densely populated, black neighborhoods.

5. The Predominately White Schools

The vast majority of the remaining city schools, located in the west and southern

portions of Winston-Salem are predominately white. The attendance zone located in the northwestern central part of the city encompassed by Brunson Elementary, Wiley Junior High and Reynolds Senior High is an exception. In Brunson, partly due to geographical zoning, but in large part due to the exercise of freedom of transfer, the black percentage of the student body is 24.82%. Wiley Junior High School has 22.62% black student body; and Reynolds High School has 14.89% black student body. Another exception is Easton Elementary which is located in the southern part of the city. It has a percentage of 43.32% black contained in its student body. This is due to a predominately black community which lives nearby the school site. Petree Elementary, which is adjacent to Skyland in the eastern part of the city, has 14.85% of its student body black. In the northwestern portion of the county, serving an area which is rural and agriculturally based, Old Richmond Elementary has 11.71% blacks in its student body. Located in the northern central part of the county, in a district which includes North Elementary, Lowrance Elementary and part of Kimberly Park Elementary, North High School has a black student enrollment which comprises 17.27% of the total student body.

All the remaining predominately white

schools in the system have less than 10% blacks in their respective student bodies. A complete redrawing of the geographical attendance zones would not enhance the situation substantially because of the peculiar situation involved. This system encompasses highly urbanized and industrialized areas, suburban areas, and rural and completely undeveloped areas. The vast majority of the black students in the system live generally in the northern and eastern parts of the city. Without substantial cross-bussing, there would be no way in which to cause any great degree of racial mixing.

6. The Proposed Plans

A. The Larsen Plan

Plaintiff's expert witness, Dr. Jack L. Larsen, a professor at Rhode Island College, first testified during the hearings on the matter of a preliminary injunction. At that time he presented an approach to racial mixing which, he thought, the School Board could use. If this approach had been implemented, more than one-fourth of the schools in the system would have remained with the same attendance zones or pupil assignments and some all-black and all-white schools would remain. He concluded, at that

time, that, considering the size of the County and the residential patterns, his plan would accomplish a unitary school system; that it would not be practicable to transport pupils the distances that would be required in order to mix the races in all schools.

Dr. Larsen returned to testify during the hearing on the merits. With more time and with the use of additional data furnished him, he had developed a comprehensive plan which would result in a racial mix in all the schools in the system.

The proposal submitted to the Court by Dr. Larsen (see Appendix A) calls, generally, for the division of this system's elementary schools into three categories, i.e., the "inner city' elementary schools, the "middle rim" elementary schools, and the "outer rim" elementary schools. Dr. Larsen applies the satellite concept in his treatment of the "inner city" and "outer rim" schools. The usual situation would be one "inner city" school linked up with two "outer rim" schools. Then, instead of the present concept of an elementary school containing grades one through six, the two "outer rim" schools would service grades one through four, each drawing off students in those grades from the "inner city" school. The "inner city" school would serve all students from the three schools who were in

grades five through six. Since the "inner city" schools are predominately black, this would necessitate the transportation of young black children for two-thirds of their elementary education for distances of from five to seventeen miles. A rough average of the distances to be traveled under this particular phase of the plan would be nine miles, with approximately 6,025 elementary students requiring additional transportation under the satellite concept.

Dr. Larsen suggests the use of express buses with adult drivers to make the trip between the schools involved. This would necessitate the students going to the school now serving their geographical zone and there being picked up by an express bus to be motored to the satellite school. In the county areas, this would mean that an individual student would have to be picked up by a local school bus, driven by a student driver, taken to a nearby school and await the departure of the express bus. To alleviate the time problem, Dr. Larsen stated that the opening and dismissal hours should be staggered in the "outer rim" and "inner city" schools.

The fifteen remaining elementary

schools are classified by Dr. Larsen as the "middle rim" schools. Each school within this group would house grades one through six. These schools would be divided into four groups and the existing attendance zone lines separating the schools within the same group would be abolished. Pupil assignment would be made based upon the following criteria: (1) nearness to the school, and (2) the desired racial composition of the particular school. Admittedly, this segment of the plan could not be effectively carried out without the use of pupil locator maps, which are not presently available. Due to the lack of these maps, Dr. Larsen could not be too definite about the actual distribution of students to the individual schools in these areas. But in order to achieve an acceptable degree of mixing, according to his definitions, more than likely there would have to be a substantial degree of bussing within this "middle rim" group.

Attendance on the secondary level could then be adjusted by the judicious use of feeder systems from the modified elementary schools. Here also pupil locator maps would be necessary.

Through the use of this plan, Dr. Larsen would hope to attain, as close as

possible, an average of 27.5% black in every student body in the system.

For an example of how the "inner city" - "outer rim" system would work, take Group # 4. This is the Rural Hall-Oak Summit-Carver Crest combination. Assuming staggered starting times of 8:30 for the "outer rim" schools and 9:00 for the "inner city" schools, the black first through fourth graders would have to arrive at the Carver Crest School at a time adequate to enable them to travel either the 11 miles to the Rural Hall or the 6 miles to Oak Summit. Then 200 would board buses to go to Rural Hall and 118 would embark on their way to Oak Summit. The 159 fifth and sixth graders, living now not more than one-half a mile from Carver Crest would arrive about an hour later to begin their school day. Meanwhile, 306 fifth and sixth graders would be gathering at Oak Summit and another 307 would be waiting at Rural Hall to catch their express buses into Carver Crest. Since a large number of the students attending County schools have to utilize transportation furnished by the school system in order to travel to the school in their district, this would necessitate two bus rides for these children, i.e., one from their home either to Rural Hall or Oak Summit, and then another

one to Carver Crest. In the afternoon, the black students would be express-bussed back to Carver Crest when their day ended at 2:30. At 3:00 the white fifth and sixth grades attending Carver Crest would leave to return to their respective outlying schools. Here another problem arises. There would have to be transportation afforded these students so that they could get from Oak Summit or Rural Hall back to their homes. This would mean that the School Board would either have to invest in even more buses or let those white first through fourth graders who finished school at 2:30 wait until the express buses returned at 3:30 or later before they could be transported home.

The intricacies of this plan demonstrate the extreme difficulties involved in any attempt to attain an approximate racial mix in every school in the system. The Court finds that the undue burden which would result from the implementation of the Larsen plan, not only upon the School Board, but vastly more important, upon the students, both black and white, within this system, far outweighs any benefits which might be derived therefrom.

Furthermore, another aspect of this

plan might be noted. In Beckett v. School Board of the City of Norfolk, 308 F.Supp. 1274 (E.D.Va. 1969), Judge Hoffman discussed the testimony of Dr. Thomas F. Pettigrew whom the Court categorized as "undoubtedly the most outstanding and knowledgeable person in the field of sociology and race relations as related to education." Dr. Pettigrew testified that although he was a "racial integrationist," it was his opinion that the greatest single correlate of achievement in the public schools was the social class of the students attending the individual schools. He considered race, standing alone, a secondary factor. This Court takes cognizance of the fact that the particular race of a student should not be the sole factor in making a determination in this case. And for this reason also the Court does not accept the plan tendered by the plaintiffs. Additional considerations are necessary in order to view the situation in its totality and proceed on a course which has as its goal quality education for all the students of this system.

B. The School Board Plan for 1970-1971

The school board presented a Pupil Assignment Plan for 1970-1971 to the Court on February 16, 1970. [See Appendix B].

It retained the freedom of choice provisions which had been used in previous school years under the geographical attendance zone system, with the following modifications in transfer policies and in attendance zones. Priority would be given to those students who desired to transfer from a school in which their race was in a majority to a school in which their race would be in the minority, in other words, majority to minority requests. These requests would be honored until a school had reached an attendance level of 10% over its normal rated capacity. The normal rated capacities had been re-evaluated and adjusted upward in this plan. Also included under this plan for majority to minority transfers was the offer of free school bus transportation for students so desiring who lived one and one-half miles or more from the school which they planned to attend. The majority to minority requests would be given first priority until June 1, 1970, at which time, and up to August 28, 1970, requests would be considered on a priority system based on the date of receipt of the request without regard to race. No transportation would be furnished to these students. Also no request for transfer to a school would be granted if that school had already reached its normal rated capacity.

Also, under the board's plan, Anderson, an all-black combination junior and senior high school, would be converted into a junior high school only and the approximately 400 senior high school students would be assigned to Parkland, a nearby, predominately white, senior high school.

The major change effected by the board's plan was the conversion of Carver, a predominately black school serving the levels of kindergarten through grade 12, into a junior high school. Two, contiguous, predominately white elementary attendance zones were redrawn to absorb the lower grades at Carver. These were the Mineral Springs, Oak Summit and Ibraham district and the Petree district. In turn, the junior high school attendance zones were redrawn with the result that Carver Junior High School would have a majority white student body. The 212 senior high school students who would have normally gone to Carver were reassigned to two predominately white senior high schools, North and East, whose attendance zones were adjacent to the old Carver zone.

Moreover, because of the changes in the Carver district, another elementary attendance zone which had contained three

elementary schools (Ibraham, Mineral Springs and Oak Summit) was redistricted into three distinct zones, one of which, Mineral Springs, now includes a section of a predominately black attendance zone (Lowrance). This means that those Lowrance students would attend Mineral Springs Junior High rather than Hanes Junior High.

Table III reflects those approximate changes in the make-up of student bodies which would result if the School Board plan were to be implemented.

TABLE III

Elementary School	1969-1970 Black	White	Black Percentage
Carver	706	3	99.58%
Ibraham	0	361	0.00%
Lowrance	726	12	98.24%
Mineral Springs	48	833	5.45%
Oak Summit	30	657	4.37%
Petree	49	281	14.85%
	1970-1971		
Carver	Discontinued		
Ibraham	235	361	39.43%
Lowrance	558	11	98.06%
Mineral Springs	175	706	19.84%
Oak Summit	95	700	11.95%
Petree	146	319	31.39%

Junior High Schools	1969-1970 Black	White	Black Percentage
Anderson	541	0	100.00%
Carver	287	0	100.00%
Hanes	500	13	97.47%
Mineral Springs	28	890	3.05%
Walkertown	45	622	6.75%
	1970-1971		
Anderson	541	00	100.00%
Carver	190	340	35.85%
Hanes	423	13	97.02%
Mineral Springs	127	678	15.77%
Walkertown	46	433	9.60%

Senior High Schools	1969-1970 Black	White	Black Percentage
Anderson	402	0	100.00%
Carver	240	0	100.00%
East	65	1474	4.22%
North	305	1461	17.27%
Parkland	61	1461	4.01%
	1970-1971		
Anderson	Discontinued		
Carver	Discontinued		
East	112	1474	7.06%
North	405	1461	21.70%
Parkland	497	1453	25.49%

7. Faculty Desegregation

On January 14, 1970, the Winston-Salem/Forsyth County Board of Education, by resolution, and without Court order, [8] initiated a

[8] While this Court did on January 19, 1970, enter an order directing the Board to integrate the faculty in accordance with

the mandate of Nesbit, such should not mitigate in the least the Board's action, as the Court's action was prompted by press reports that action was about to ensue to enjoin the teacher reassignment plan of the Board.

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plan to further desegregate the faculty in the school system effective January 23, 1970, in accordance with the guideline established in Nesbit v. The Statesville City Board of Education, 4 Cir., 418 F.2d 1040 (1969). The plan went into effect on January 26, 1970.

Approximately 2,100 teachers are employed in the system, and approximately 26 percent of the total are black teachers. Now the proportion of Negro teachers, with two exceptions brought about by appeals to the School Board, in each school approximates the proportion of black teachers to white teachers in the whole system. Beginning with 1964, the Board first assigned teachers across racial lines, and this practice has increased each year as follows:

1964	8
1965	12
1966	107
1967	124
1968	199
1969	296

The reassignment plan for teachers, put into effect on January 26, 1970, involved a transfer of approximately 425 teachers. Nevertheless, the number of teachers teaching across race lines by assignment of the Board had increased steadily over some years and by 1969 was approximately 15 per cent, i.e., 296 out of 2,100.

In order to effect a plan of faculty desegregation, a committee of 17 people from within the system was formed. Various exceptions could not be transferred. Those teachers and other personnel that would be excluded were:

(a) anyone who would be 65 by July 1, 1971;

(b) principals and assistant principals approved by the school board;

(c) special education teachers and those who worked with the retarded and handicapped;

(d) the one teacher in the experimental program;

(e) those already teaching across racial lines;

(f) continuing education instructors;

(g) those teachers involved at Central Rehabilitation;

(h) music teachers and librarians would be placed in a separate pool;

(i) the principals could select 20% of their original faculty to remain, so that a nucleus could be retained at each school.

For a complete tabulation of the results of the faculty desegregation plan for the year 1970 see Appendix C. For the purposes of this tabulation, Central Rehabilitation and the Children's Center were eliminated because there were no teachers who could be matched with others in order to make an exchange--these teachers have students who are physically handicapped. There are four teachers who are provided by the system. The Board has no control over the actual operation of the facility. Central School is primarily for handicapped students at the junior and senior high school level.

At the elementary level the ratio of black to white faculty is 29.98% black to 70.02% white. The range within which the black faculty ratio spans under the reassignment plan is 16.67% at the Children's Home to 38.46% at North Elementary. [At the Children's Home the plan had been originally to assign a third black teacher, but there was a resignation.]

At the junior and senior high schools [excluding the combination schools, i.e., Anderson (7-12), Carver (7-12) and Mount Tabor (9-12)] for the black faculty is 19.94% at Dalton to 33.33% at Kennedy. The range at the senior high school level is 14.49% at East to 31.25% at Atkins.

In the combination schools of Anderson and Carver, the adjustment of ratios was made difficult because of the small size of the student bodies and the wider range of subjects which an individual on the faculty would have to teach. Therefore, under the plan, the Anderson faculty was 40% black and the Carver faculty was 45.83% black.

8. Transportation

Generally speaking, no transportation

is provided at the present time for pupils attending schools in the City of Winston-Salem. Transportation is provided for pupils who attend schools outside the 1957 corporate limits of the City of Winston-Salem and who live 1 1/2 miles or more from school, but no transportation is provided for pupils attending schools inside the 1957 corporate limits of the City. The school system has 216 buses, and transports about 18,104 pupils each day at an annual cost of approximately $370,000.00. $110,000.00 is paid by the Local Board, the remainder by the State Board. All bus routes are designed to serve the pupils in the schcol attendance area in which the bus is assigned. Pupils are assigned to buses without regard to race or color. Buses do not pick up pupils outside the attendance boundaries of the school served by the bus. However, if a pupil transfers to a school outside his own attendance area he may catch a school bus at any regular pick-up point within the attendance area of the school to which he transfers. A pupil who resides less than 1 1/2 miles from school may also catch the bus at any regular pick-up point.

The case of Sparrow v. Gill, 304 F. Supp. 86 (M.D.N.C. 1969), decided by a three-

judge court, will require the State of North Carolina to eliminate the 1957 corporate boundary limitation and to either provide transportation only outside municipalities or to all students who live more than a specified distance from school, without regard to corporate boundaries. The injunction ordered as a result of this opinion will be in effect at the beginning of the 1970-1971 school year. It is apparent from information gained through the news media that funds will be available for intra-city transportation during the 1970-1971 school year.

9. Curriculum

The curriculum in the elementary and junior high schools is basically the same. The curriculum in the senior high schools is based upon the demand for the various courses which are offered each year in the spring. Some of the courses given in the predominately white high schools are not given in the predominately Negro schools and vice versa. Every student who expresses a desire to take any course not offered in his particular high school is contacted personally and arrangements are made to allow him to take that course. This may be done by having him transferred to a school offering the course or by allowing him to go to that school for the specific purpose of taking

the course. There is no evidence that by increasing the number of Negroes attending school with whites, the opportunity of any student to take any course would be enhanced.

The greatest variation in curriculum occurs in those schools in low-income areas which receive additional funds through Title I of the Elementary and Secondary Education Act for a variety of special reading and other compensatory education programs. These programs are concentrated in 17 schools, 15 of which are predominately or all black. The current year's budget for Title I programs is $863,419.00, which when divided among the 2,817 eligible pupils results in a per pupil expenditure of $306.00. Title I programs are directed at eligible students, rather than eligible schools, but they can be more effectively administered when the eligible students are concentrated in a relatively small number of schools. Further, some of the programs have residual benefits for pupils who are not themselves eligible. In addition, the School Board operates or proposes to implement several other programs that will be concentrated in the predominately Negro schools. At least one of these programs, the Model Cities Education Program, with a budget of $696,704.00 and a per pupil expenditure of $898.00 is directed

at eligible schools rather than eligible pupils and would be administered in the North Elementary School no matter who attended it.

Pupils receiving the benefit of teaching aids and materials and of concerted compensatory or remedial programs under Title I, ESEA, are receiving educational benefits not currently available throughout the system.

10. Athletics and other Activities

All school-connected services, facilities, athletics, activities and programs are open to each student on a desegregated basis. A student assigned to a new school is not subject to any disqualification or waiting period for participation in activities and programs, including athletics.

Interscholastic athletic competition is open to all schools without discrimination. The predominately white schools engage in athletic competition with the predominately or all-black schools.

11. The Racial Make-Up of Neighborhoods and Public Housing

It has not been shown that the School

Board's plan of geographic zoning was established in any way by reference to the race of the inhabitants of the various zones. When the Board decided to discontinue Paisley Senior High School, new zone lines were deliberately drawn to increase integration at Reynolds and North High Schools. Four schools have changed in their racial make-up since they were opened, three of these since 1960. These four are Skyland, Lowrance, North Elementary and Hanes Junior High School. These schools were formerly all-white and are now black or predominately black because of change in residential make-up of the neighborhood. However, unless people are required to live in "racial balance," the homogeneous quality of zones will be constantly changing. The population shifts show conclusively that black citizens have been able to acquire residences in those areas inhabited by white citizens, limited only by their economic ability and desire to do so. In early days, ordinances were adopted to restrict the areas in which Negroes could reside, but the ordinances have not been enforced, nor have they had any apparent effect upon the movement of Negroes into other areas. The factors affecting the movement or lack of movement by Negroes have not been legal in nature, but rather, sociological and economic. As early as 1914, the Supreme Court of North

Carolina in State v. Darnell, 166 N.C. 300, 81 S.E. 338 (1914), a case involving the City of Winston, held such an ordinance unconstitutional. Another attempt at racially oriented zoning was made in 1930, but this also was struck down by the North Carolina, Supreme Court in 1940. Clinard v. City of Winston-Salem, 217 N.C. 119, 6 S.E.2d 867. There is no evidence as to whether or not either ordinance was ever enforced, but, regardless of that, none of the area zoned for whites in the 1912 ordinance is occupied by whites today, and much of the area zoned for whites in the 1930 ordinance is now occupied by blacks. Further, the urban area of Winston and of the Winston-Salem of those days was but a fraction of the 57.5 square miles which comprise the City today. Plaintiffs' evidence showed, and the Court finds, that substantial population shifts occurred between 1960 and 1969, clearly demonstrating that blacks have been able to acquire places of residence in areas in which whites have traditionally lived in Winston-Salem.

William H. Andrews, Director of Community Services for the local Redevelopment Commission, and a member of the black race, testified that the Commission followed a strictly non-discriminatory policy in locating

places of residence for persons displaced by urban redevelopment and had done so since 1961 when the local Commission was organized; that blacks have not been denied access to any area by reason of race; that the Commission receives real estate listings throughout Winston-Salem and has assisted over 1500 families, all black, to relocate wherever they wished.

A number of public housing or redevelopment projects have been completed in Winston-Salem in the last several years, underwritten with federal funds for those in low income brackets. Among such projects are: Happy Hill Gardens, Kimberly Park Terrace, Piedmont Park and Cleveland Avenue Homes. In these four projects are 1,538 units, rentable to all races. These projects are located in now predominately Negro neighborhoods in response to the demand for housing there and are occupied predominately by those of the Negro race. In resettling displaced Negro families, practically all such families requested officials of the housing authority to seek homes for them in the same locality from which they were displaced. The School Board has no control as to the location or to the occupancy of these federally subsidized projects. Thus the federal government acts to meet a housing need in a community without regard to "housing balance," and multiplying many times the difficulty for the School Board to accomplish a "balance."

12. Operation, Direction and Control of the Winston-Salem/Forsyth County School System

In addition to the Winston-Salem/Forsyth County Board of Education, the plaintiffs also named as defendants the Board of County Commissioners of Forsyth County, the North Carolina State Board of Education, and Dr. Charles F. Carroll, State Superintendent of Public Instruction. [Dr. Craig Phillips succeeded Dr. Carroll as Superintendent and under Rule 25(d)(1) of the Federal Rules of Civil Procedure was automatically substituted as a party defendant.]

The evidence shows that both the Forsyth Board of County Commissioners and the State of North Carolina appropriate funds based on a budget prepared by the local School Board. These appropriations are made on a statistical and nondiscriminatory basis. The local School Board directs, controls and supervises the school system and is so vested with such power and authority by Chapter 115 of the General Statutes of North Carolina.

The evidence in this case is totally devoid of proof that the schools in this school system are administered and controlled

by other than the Winston-Salem/Forsyth County Board of Education. Even if by inference it could be deducted that there is some control, then there is no showing of discrimination by either the Forsyth County Board of Commissioners, the State Board of Education or by the State Superintendent of Public Instruction.

The Court finds as a fact that whatever relief the plaintiff may be entitled to pursue can be sought just as expeditiously, and whatever remedies the plaintiffs may be entitled to receive can be enacted just as effectively through their suit against the local School Board. The local Board is the focal point in the operation of this school system.

DISCUSSION

The Board must maintain the ratio of black to white faculty members of each school in approximately the same ratio as the ratio throughout the system. Nesbit v. The Statesville Board of Education, 4 Cir., 415 F.2d 1040 (1969). Though there are numerous specific allegations of discrimination in practically all facets of the operation of the schools, basically the issues arising from the evidence and for the Court to decide are the following:

As provided under the Pupil Assignment Plan of the Board for the school year 1970-1971: (1) has the Board used all reasonable means to integrate the schools in their jurisdiction, and (2) has the Board taken adequate measures to assure that no pupil is excluded from any school on the basis of race?

It is concluded that Swann, et al. v. Charlotte-Mecklenburg Board of Education, et al., 4 Cir., _____ F.2d _____ (decided May 26, 1970) dictates that these are specific issues that must be resolved as to those school plans involving large black residential areas where the Board contends that all schools cannot be integrated by using reasonable means.

It is no longer a matter of dispute that school boards have a duty to convert to a unitary school system in which racial discrimination is eliminated "root and branch." Green v. School Board of New Kent County, 391 U.S. 430, 437, 20 L. ed. 2d 716, 88 S. Ct. 1689 (1968). Then more recently, in Alexander v. Holmes County Board of Education, 396 U.S. 19, 20, 24 L. ed. 2d 19, 90 S. Ct. _____ (1969), a unitary school system was defined as one "within which no person is to be effectively excluded from any school because of race or color." After Alexander, in Northcross v.

Board of Education of Memphis, _____ U.S. _____, 25 L. ed. 2d 246; 90 S. Ct. 891 (1970), the Chief Justice in a separate but concurring opinion recognized that the definition of a unitary system set forth in prior cases leaves open some practical problems such as, among others, "to what extent transportation may or must be provided to achieve the ends sought by prior holdings of the Court."

Green established that all facets of a school system, six in number, must be desegregated, i.e., student bodies, faculty, staff, transportation, extracurricular activities and facilities. The evidence demonstrates, and the Court so finds, that the Winston-Salem/Forsyth County Board of Education is operating this system in compliance with five of the six divisions of school operation, leaving only the question of student composition.

While it is not conceded by the plaintiffs that the Board has always acted in "good faith," it is significant that:

(1) In 1957, the Winston-Salem Board of Education (before the merger of the County and City systems in 1963) starting with Reynolds

High School, one of the outstanding high schools in this State, started a program of desegregation. In the 1969-1970 school year, Reynolds pupil population consisted of 255 blacks and 1456 whites;

(2) Negroes consistently served on the respective Boards prior to the merger of the two systems and on the Winston-Salem/Forsyth County Board since the merger.

(3) The number of children attending integrated schools has steadily increased through the years.

(4) HEW consistently and without exception approved the plan of operation of the system until litigation ensued when, by reason of the litigation, the submission of plans was not required.

(5) After the decision in Nesbit, the Board moved voluntarily to integrate the faculty in the ratio of black to white as there spelled out. Prior thereto, there was substantial faculty integration.

(6) The Board initiated and supported a bond election resulting in 24.8 million dollars being voted in March, 1968, for bonds for school construction and equipment. As is done in most cases, and wisely so, where large sums of money are voted, definite and specific plans for the expenditure of the entire 24.8 million dollars were not made. This makes sense when large sums are voted requiring much time for planning and execution of the plans. Such sums seldom can be prudently spent at once and are best utilized in segments. Initial projects proposed for the money would have resulted in increased integration in the schools. The bonds are not now marketable by reason of the litigation and none have been sold. When the issues in this litigation, and in Allen (formerly Atkins) v. North Carolina State Board of Education, et al., (M.D.N.C. # C-72-WS-68) can be resolved, the Board plans to build two high schools with part of the proceeds from these bonds, one in the northeast quadrant of the administrative unit and the other in the southeast quadrant.

Atkins High School, a school now serving all-black students could then be closed.

(7) The Board has sought and received advice and help from various study groups and experts in devising reasonable procedures and plans to desegregate the schools and to further the total educational program.

(8) The Board has diligently sought and received funds from available sources to establish and promote special education programs. Most of the funds received have been spent in the predominately black schools.

(9) The Board closed Paisley Senior High School and reassigned the pupils to increase racial mixing.

(10) It has gerrymandered zone lines to promote desegregation.

(11) It operates its athletics program on an integrated basis.

Upon the Board rests the burden to demonstrate that the school buildings attended

only by black children and only by white children are not the result of discrimination and meet the reasonableness test. Undoubtedly, the Board has made a determined effort to overcome the many problems concerned with the desegregation of the schools. The question is has it done enough. Given adequate buses and personnel, the schools certainly could be put in "racial balance." While the evidence does not show how many students must be bussed to implement the Larsen plan, a study of the exhibits leaves no doubt that massive bussing would be required if the plan were adopted. It is the conclusion of the Court that constitutional principles do not require the extreme measures necessary to effect a "racial balance" in all the schools in this system required by the Larsen plan or such other plan as will accomplish a racial balance.

One can easily discern that neither the children nor parents of either race object to the mixing of the races, but there is fervent objection to wholesale bussing by both races, black and white, children and parents. Such groundless usurpation of time and expenditure of school funds is unwarranted and difficult of explanation. This is not to intimate that popular objections can dictate the requirements of the Constitution.

Under the pupil assignment plan for 1970-71, students are assigned on the basis of geographic attendance zones with free transfer but to promote further integration, it is provided that

(1) priority be given to requests for transfer from a school in which the pupil's race is in the majority to a school where the pupil's race is in the minority;

(2) majority to minority requests are to be honored even though such results in overcrowding, up to 10 per cent above the normal rated capacity of the school; and

(3) free school bus transportation is available to pupils who make majority to minority transfers if they live one and one-half miles or more from the school to which they transfer.

Upon consideration of the Board's freedom of transfer policy, it is concluded that while the above provisions tend to promote integration, the continuation of the

policy of permitting any child to transfer may be expected to encourage resegregation. The Board's policy should be altered so that a pupil who is a member of a minority race in the geographic attendance zone of that pupil's residence shall be assigned to the school in the geographic attendance zone of his residence and shall not be allowed to transfer to a school in a zone where he would be in a majority racial enrollment. There should be an exception to this rule in special education programs and in special individual hardship cases.

The schools in the subject school system were built on the then acceptable premise of locating the schools where the children were located. It is clear that the neighborhood concept cannot be approved if residence in a neighborhood is denied to black pupils on the ground of color. Brewer v. School Board of City of Norfolk, 4 Cir., 307 F.2d 37, 42 (1968), but on the other hand, it is equally clear that now residence cannot be denied in any neighborhood because of race or color. Closely allied with the neighborhood school concept is geographical zoning, as provided in this system. Geographical zoning is an approved method for the assignment of pupils, but such may not serve as a guise to foster racial segregation.

The Board strenuously contends that there has been no gerrymandering of the zone boundaries, and that the attendance zones are drawn based on nonracial criteria except where efforts were made to increase integration. On the other hand, the plaintiffs contend that the attendance zones are drawn to foster racial segregation. The Court finds no evidence to support the contention of the plaintiffs. Instead, it appears that the boundaries of the zones are drawn so that the pupils attend the school nearest their residence, recognizing natural boundaries, barriers and obstacles that might endanger the children, such as heavily traveled streets. Nevertheless, as will be later pointed out, there are two areas in the school system which the Court concludes will not meet the "reasonableness test" established in Swann, et al. v. Charlotte-Mecklenburg Board of Education, et al., supra.

While the record is not replete with proof that there has been private discrimination, the Court fairly must accept as a fact that earlier there has been some private discrimination in the sale and purchase of property located within the school system. There is evidence that more than twenty years ago ordinances existed in the City of Winston-Salem defining areas where black

and white could live. However, these ordinances have long since been declared unconstitutional[9] and have never been really

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9 Jones v. Alfred H. Mayer Co., 392 U.S. 409, 20 L. ed. 2d 1189, 88 S. Ct. 2186, dec'd in 1968, bars all racial discrimination, public and private, in the sale and rental of property.

State v. Darnell, 166 N.C. 300, 81 S.E. 338 (1914) held a 1912 Ordinance of the City of Winston providing for segregation of the races unenforceable in that the ordinance was adopted without authority. Also, a 1930 zoning ordinance providing for segregation was removed in 1940.

Clinard v. City of Winston-Salem, 217 N.C. 119, 6 S.E. 2d 867.

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enforced, certainly not in the last two decades. The evidence is that several neighborhoods in the City of Winston-Salem have changed from all-white or predominately so to predominately black, to-wit, the Bon Air area, the area surrounding the Old City

Hospital, and an area in northeast Winston-Salem. An area known as Morningside Manor, located in the southeastern part of the City of Winston-Salem, developed within the last fifteen years, more or less, is inhabited by both blacks and whites. Areas surrounding North Elementary School and Hanes Junior High School have changed from predominately white to predominately black. Within the last three weeks, a feature story appeared in the local daily paper showing photographs of Negro families living in the western and northwestern sections of the City.

The reasonable conclusion to be drawn from the evidence is that even though in times there has been some discrimination in the sale and rental of property, the concentration of the Negro population in the northeastern quadrant of the City has been caused by economic factors and the desire of blacks to live in the areas where they do live rather than in white or predominately white areas. This conclusion is confirmed by the fact that in resettling displaced blacks as a result of public housing projects that without exception the blacks asked to be resettled in the same area they lived, that is, in black or predominately black areas even though other areas were open. The concentration of blacks cannot be fairly attributed to

public and private discrimination, and it is concluded that the housing patterns are not the result of such discrimination. In any event, where de jure segregation has been eliminated and de facto segregation remains, there surely must come a time when the stigma of de jure segregation is removed, certainly so in this situation, particularly in those areas once populated by whites and now all-black or predominately black.

In a school system where so many black pupils attend school with white pupils, where in each school black and white teachers work hand in hand, and where athletes, black and white, make up the teams in the majority of the schools, it is difficult to believe that a Negro child seeing this, as he must, would believe that a dual system of schools is being operated.

The plethora of decisions in the area of school integration indicates the difficulty in determining what constitutes an effective disestablishment of a dual school system. The formulation of definite rules and guidelines is difficult, if not virtually impossible. The task facing the nation, not merely the South, is to respond and continue to respond to the Brown decision in the light of the circumstances in

each case. The Board in the subject case has shown a consistent approach toward a unitary system. Its actions have not been haphazard and belated, responding only after judicial and administrative coercion. While good faith cannot be a substitute for effective desegregation, good faith is a vital element in properly evaluating local judgment in devising compliance plans. Orderliness brings stability and stability promotes the educational process, the education of children being the polar star of any properly run school system.

The plaintiffs cite Green, among other cases, as authority for their position. The fact situation here is vastly different. There were only two schools in New Kent County, one white and one black. Buses met or passed each other en route to school, carrying either all black pupils or all white. Dual bus routes were the rule. The residences were mixed with no concentration of black citizens in any particular area. The distinction between the system in New Kent County and the system here is obvious and needs no elaboration.

The decision of this Circuit in Swann v. Charlotte-Mecklenburg Board of Education, et al., supra, applies "the test of reasonableness" and must be followed in arriving at a decision in this case. Though as set forth

in the findings of fact herein, there are natural boundaries which tend to support the zones provided for Diggs Elementary, Kimberly Park Elementary and Cook Elementary (Carver Crest), it is the opinion of the Court that by redrawing the zone lines, pairing, clustering, or using other methods available to the Board, that a reasonable integration could be accomplished in each of these schools. Under the proposed plan of the Board for these schools for the 1970-1971 school year, each of the aforementioned schools remains with an all-black enrollment. Practical difficulties cannot alter constitutional requirements, and it is concluded that by reasonable means, considering the proximity of these schools to adjoining white areas, white enrollment in each of the three schools can be accomplished. The problems involved in doing so are not in any manner comparable to the problems involved in changing the racial composition of schools such as Brown, Fourteenth Street, Mebane and others. It is recognized that in order to accomplish an integrated student body at Diggs, Kimberly Park and Cook there will of necessity be changes in the racial composition in other schools.

CONCLUSIONS OF LAW

1. The area attendance zones of each

school in the Winston-Salem/Forsyth County School Administrative Unit have been drawn without discrimination as to race or color and with due regard to all circumstances existing in each school area. Nevertheless, all reasonable means as required by Swann v. Charlotte-Mecklenburg Board of Education, supra, have not been utilized to change the racial composition at Diggs Elementary, Kimberly Park Elementary and Cook Elementary (Carver Crest).

2. Under the plan of operation submitted by the Board for the 1970-1971 school year, there will result some all-white and some all-black schools. This fact, however, will not invalidate the plan because the large black residential areas in the City of Winston-Salem are such that reasonably all schools cannot be integrated. Remedies other than Court imposed are available to correct this situation, e.g., the more extensive use of the right of transfer or changes in the residential pattern, or both.

3. Upon proper compliance with the direction of the Court herein with reference to Diggs Elementary, Kimberly Park Elementary, Cook Elementary (Carver Crest), no person will be excluded from any school because of race or color.

4. The plan of the Board for the operation of the three schools mentioned in Paragraph 3 first above does not comply with recently enunciated constitutional principles in this Circuit, and the racial composition in these schools must be changed.

5. Except in the area of pupil composition, the Board's plan effects a unitary system.

6. In accordance with Finding of Fact No. 12, the action should be dismissed as to the defendants Board of Commissioners of Forsyth County, North Carolina State Board of Education and Dr. Craig Phillips, State Superintendent of Public Instructions.

7. The Board's freedom of transfer policy should be altered so that a pupil whose race is in a minority in the school to which he is assigned under the plan of assignment shall not be allowed to transfer to a school in a zone where he would be in a majority racial enrollment with due consideration given to the exceptions stated in the foregoing Memorandum.

8. The revised plan for the 1970-1971 school year should include such innovative programs as the Board can devise to increase contact between the races.

9. The Board must continue faculty assignments as previously ordered.

10. To further refine its unitary system, the Board should forthwith proceed to plan for the construction of the two high schools, one in the northeast quadrant of the administrative unit and one in the southeast quadrant.

In addition to the above enumerated conclusions of law, the Court, incorporates herein by reference those conclusions of law appearing in the section of this Memorandum entitled "Discussion" and which are not specifically set forth by number in this section.

O R D E R

Pursuant to the foregoing Memorandum, it is ORDERED and DECREED that:

1. The Winston-Salem/Forsyth County Board of Education file a revised plan for the operation of its schools within twenty (20) days of the date of this Order.

2. The revised plan shall include the following:

(a) A provision that a pupil whose race is in a minority in the school to which he is assigned under the plan of assignment shall not be allowed to transfer to a school in a zone where he would be in a majority racial enrollment. Excepted from this rule will be those students in special education programs and special individual hardship cases.

(b) Reasonable integration of Diggs Elementary, Kimberly Park Elementary and Cook Elementary (Carver Crest).

(c) A summary of innovative programs to increase contact between the races.

3. The Winston-Salem/Forsyth County Board of Education will forthwith proceed to formulate, adopt and and execute plans for the construction of one high school in the northeast quadrant of the school

administrative unit and one in the southeast quadrant.

4. The action is dismissed as to the defendants, Board of Commissioners of Forsyth County, North Carolina State Board of Education and Dr. Craig Phillips, State Superintendent of Public Instruction.

5. Within seven (7) days after the Board has filed the revised plan, the plaintiffs will file such exceptions, if any, as they desire.

6. Unless specific demand is made for further hearing within three days after the filing of exceptions or thirty days after the date of this Order, whichever shall first occur, the Court will enter an Order relative to the revised plan.

7. Since prompt action is essential, such order as shall be entered by this Court after the filing of the revised plan shall remain

in full force and effect unless modified by an order of this Court or the United States Court of Appeals for this Circuit.

United States District Judge

une 25, 1970

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 14,694

RUDOLPH W. ADAMS, BRENDA ADAMS, and THEODORE R. ADAMS, JR., minors, by Theodore R. Adams, Sr., their father and next friend, et al.,

Appellants,

-versus-

SCHOOL DISTRICT NUMBER 5, ORANGEBURG COUNTY, SOUTH CAROLINA, a public body corporate, et al.,

Appellees.

Appeal from the United States District Court for the District of South Carolina, at Orangeburg. Charles E. Simons, Jr., District Judge.

No. 15,030

CYNTHIA D. GREEN, and others including Michael DeWayne Law and Kirk Anthony Law, infants, by Maynard Law and Vernice Law, their parents and next friends, et al.,

Appellants,

-versus-

SCHOOL BOARD OF THE CITY OF ROANOKE, a body corporate, Roanoke, Virginia, and E. W. Rushton, Superintendent, Roanoke City Schools, and E. J. Oglesby, Edward T. Justis and Alfred L. Wingo, individually and consisting of the pupil placement board of the Commonwealth of Virginia,

Appellees.

No. 15,110

CYNTHIA D. GREEN, et al.,

Appellees,

-versus-

THE SCHOOL BOARD OF THE CITY OF ROANOKE, VIRGINIA, et al.,

Appellants.

Appeals from the United States District Court for the Western District of Virginia, at Roanoke. Ted Dalton, Chief Judge.

No. 15,044

CARLOTTA MOZELLE BREWER, et al.,

Appellants,

-versus-

THE SCHOOL BOARD OF THE CITY OF NORFOLK, et al.,

Appellees.

No. 15,045

DAVID E. ALLGOOD, infant, etc., et al.,

Appellants,

-versus-

CARLOTTA MOZELLE BREWER, et al.,

Appellees.

No. 15,046

THE SCHOOL BOARD OF THE CITY OF NORFOLK, et al.,

Appellants,

-versus-

CARLOTTA MOZELLE BREWER, et al.,

Appellees.

Appeals from the United States District Court for the Eastern District of Virginia, at Norfolk. Walter E. Hoffman, Chief Judge.

No. 15,185

CATHERINE SCOTT, et al.,

Appellants,

-versus-

THE WINSTON-SALEM/FORSYTH COUNTY BOARD OF EDUCATION, et al.,

Appellees.

No. 15,186

CATHERINE SCOTT, et al.,

Appellees,

-versus-

WINSTON-SALEM/FORSYTH COUNTY BOARD OF EDUCATION, et al.,

Appellants.

No. 15,187

CATHERINE SCOTT, et al.,

Appellees,

-versus-

BOARD OF COUNTY COMMISSIONERS OF FORSYTH COUNTY,

Appellant,

No. 15,188

CATHERINE SCOTT, et al.,

Appellees,

-versus-

NORTH CAROLINA STATE BOARD OF EDUCATION and A. CRAIG PHILLIPS, State Superintendent of Public Instruction,

Appellants.

Appeals from the United States District Court for the Middle District of North Carolina, at Winston-Salem. Eugene A. Gordon, District Judge.

(Argued June 7, 1971. Decided June 10, 1971)

Before HAYNSWORTH, Chief Judge, BOREMAN, BRYAN, WINTER, CRAVEN, BUTZNER, and RUSSELL, Circuit Judges, sitting en banc.

Matthew J. Perry (Lincoln C. Jenkins, Jr.; Zack E. Townsend; Jack Greenberg and Michael Davidson on brief) for appellants in No. 14,694; D. W. Robinson (C. Walker Limehouse on brief) for appellees in No. 14,694; Kermit S. King on brief for amicus curiae, H.O.P.E., in No. 14,694.

S.W. Tucker (Henry L. Marsh, III, Hill, Tucker & Marsh; George W. Harris, Jr.; Jack Greenberg, James M. Nabrit, III, and Norman Chachkin on brief) for appellants in No. 15,030 and appellees in No. 15,110; James N. Kincanon, City Attorney, and H. Ben Jones, Jr., Assistant City Attorney, for appellees in No. 15,030 and appellants in No. 15,110.

Henry L. Marsh, III (S. W. Tucker, Hill, Tucker & Marsh; Victor J. Ashe; Louis R. Lucas; Jack Greenberg, James M. Nabrit, III, and Norman Chachkin on brief) for appellants

in No. 15,044 and appellees in Nos. 15,045 and 15,046; Toy D. Savage, Jr. (Leonard H. Davis, City Attorney; Allan G. Donn, Willcox, Savage, Lawrence, Dickson & Spindle on brief) for appellees in No. 15,044 and appellants in No. 15,046; M. T. Bohannon, Jr., for appellants in No. 15,045; David L. Norman, Attorney, Department of Justice (Jerris Leonard, Assistant Attorney General, Brian K. Landsberg and Walter W. Barnett, Attorneys, Department of Justice, on brief) for the United States in Nos. 15,044, 15,045 and 15,046.

J. LeVonne Chambers (Adam Stein, Chambers, Stein, Ferguson & Lanning; Conrad O. Pearson; Jack Greenberg, James M. Nabrit, III, and Norman Chachkin on brief) for appellants in No. 15,185 and appellees in Nos. 15,186, 15,187 and 15,188; William F. Womble (John L. W. Garrou and Womble, Carlyle, Sandridge & Rice on brief) for appellees in No. 15,185 and appellants in No. 15,186; P. Eugene Price, Jr., for appellant in No. 15,187; Ralph Moody, Deputy Attorney General (Robert Morgan, Attorney General of the State of North Carolina, and Andrew A. Vanore, Jr., Assistant Attorney General, on brief) for appellants in No. 15,188.

BEST AVAILABLE COPY

BEST AVAILABLE COPY

PER CURIAM:

On April 20, 1971, the Supreme Court released opinions in Swann v. Charlotte-Mecklenburg Board of Education, _____ U.S. _____ (1971), Davis v. Board of School Commissioners of Mobile County, _____ U.S. _____ (1971) and companion cases. We immediately asked counsel in these cases to brief the questions presented in the light of Swann and Davis and set these appeals for argument before the full court on June 7, 1971. We are now convinced that all of these judgments must be vacated, except as noted, and we remand to the respective district courts with instructions to receive from the respective school boards new plans which will give effect to Swann and Davis.

It is now clear, we think, that in school systems that have previously been operated separately as to the races by reason of state action, "the district judge or school authorities should make every effort to achieve the greatest possible degree of actual desegregation, taking into account the practicalities of the situation." Davis supra, at _____. We remand these cases because the respective district judges did not have the benefit of the Supreme Court mandate that adequate consideration be given "to the

possible use of bus transportation and split zoning." Davis, supra at _____. Wherever schools are "all or predominately of one race in a district of mixed population [there will be required] close scrutiny to determine that school assignments are not part of state-enforced segregation." Swann, supra at _____. Although the existence of "some small number of one race, or virtually one-race, schools within a district is not in and of itself the mark of a system which still practices segregation by law," Swann, supra at _____, both the school authority and the district judge must nevertheless be concerned with the elimination of one-race schools.

We have previously noted that Alexander v. Holmes County Board of Education, 396 U.S. 19 (1969), is a mandate for immediate action, and further delay in achieving desegregation in this circuit will not be tolerated. Nesbit v. Statesville City Board of Education, 418 F.2d 1040 (1969). Accordingly, we are again compelled to impose upon the respective district courts a time schedule to permit compliance with Swann and Davis prior to the opening of the school year in September, 1971.

Each school board shall submit a new plan to comply with Swann and Davis on or before July 1, 1971. Other parties may file responses on or before July 9, 1971.

Each district judge shall conduct a hearing on or before July 16, 1971, to enable him to determine the effectiveness of the proposed plan or its modification.

After a plan has been approved the district court may hear additional objections or proposed amendments provided, however, that the parties shall comply with the approved plan in all respects while the district judge considers suggested modifications.

If a district judge finds that a plan submitted by the school board does not comply with the directions set forth in this opinion, he may appoint an educational expert to develop a plan for implementation in September 1971. He may also direct the school board to cooperate with the expert by furnishing information and facilities for the prompt completion of his work. A reasonable fee for the expert and his expenses shall be assessed against the school board as costs.

The school authorities and the district court should consider the use of all techniques for desegregation, including pairing or grouping of schools, noncontiguous attendance zones, restructuring of grade levels, and the transportation of pupils.

If the district court approves a plan achieving less actual desegregation than would be achieved under an alternate proposed plan it shall find facts that are thought to make impracticable the achieving of a greater degree of integration, especially if there remain any schools all or predominately of one race.

In No. 15,110, the judgment of the district court retaining Addison School is affirmed.

In No. 15,186, the order of the district court disapproving the transfer plan is affirmed.

In No. 15,187 and No. 15,188, the order of the district court joining the Board of County Commissioners, the North Carolina State Board of Education, and the Superintendent of Public Instruction is affirmed.

The Orangeburg plan may be fashioned on the alternate HEW plan with modifications and refinements that are necessary for its implementation, or upon some other plan that will meet the requirements of Swann and Davis.

In Roanoke, the court may approve

the present junior and senior high school assignment plan. In redrafting the plan for the elementary schools, the school authorities and the district court may proceed according to the plan outlined by Dr. Michael J. Stolee, or modifications, extensions and refinements of this plan.

The Norfolk plan may be based on a revision of the Stolee C plan with necessary modifications and refinements, or the board may adopt some other plan of its choice that will meet the requirements of Swann and Davis.

In Winston-Salem/Forsyth County, the school board may fashion its plan on the Larson plan with necessary modifications and refinements or adopt a plan of its choice which will meet the requirements of Swann and Davis.

In No. 14,694, No. 15,030, No. 15,044, and No. 15,185 the appellants shall recover their costs. In No. 15,110, No. 15,045, No. 15,046, No. 15,186, No. 15,187 and No. 15,188, the appellees shall recover their costs.

Let the mandate issue forthwith.

Albert V. Bryan, Circuit Judge, concurring specially:

I join in the foregoing opinion-order on the assumption that the alternatives offered to the school authorities and the District Courts are true alternatives--that they need not be in the image of the Stolee or Larsen plans. Otherwise, I could not concur, for I think the only pattern the school authorities and the courts must observe is one honoring the prescriptions of Swann and Davis. So long as it is in keeping with these decisions, my understanding is that the formulation of a plan is entrusted to the discretion of the school authorities and not confined to the pattern of Stolee or Larsen.

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

WINSTON-SALEM DIVISION

CATHERINE SCOTT, et al, Plaintiffs	)	
v.	)	NO. C-174-WS-68
WINSTON-SALEM/FORSYTH COUNTY BOARD OF EDUCATION, Defendant	)	

O R D E R

GORDON, District Judge

In compliance with the Order of this Court entered June 25, 1970, the defendant filed a Report and Motion on July 14, 1970, containing various amendments to the pupil assignment policy, a summary of proposed programs to increase contact between the races in the system, a resolution pertaining to the construction of two new high schools, and a motion that the Court reconsider and

delete that portion of its order concerning the reasonable integration of Diggs Elementary, Kimberly Park Elementary and Cook Elementary [Paragraph 2(b) of the Order of June 25, 1970.]

It is hereby ORDERED AND DECREED that:

1. Except as hereinafter set out, the Report of the Winston-Salem/Forsyth County Board of Education is accepted by the Court, subject to paragraph 7, infra.

2. Defendant's motion for the reconsideration and deletion of paragraph 2(b) of the Order of June 25, 1970, is denied.

3. In order to achieve the reasonable integration of Diggs Elementary, Cook Elementary, and Kimberly Park Elementary, the Winston-Salem Forsyth County Board of Education shall do the following:

(a) Cluster the Diggs Elementary Attendance Zone with the Attendance Zones for Latham Elementary and South Park Elementary and develop a plan which will result in a 61% white - 39% black student

body in each school in the cluster with a 5% leeway in either direction.

(b) Cluster the Attendance Zones for Kimberly Park Elementary and Cook Elementary with the Attendance Zones for Speas Elementary, Sherwood Forest Elementary, and Whitaker Elementary and develop a plan which will result in a 66% white - 34% black student body in each school in the cluster with a 5% leeway in either direction.

4. No freedom of transfer shall be allowed either into or out of the attendance zones involved in the clusters set out in Paragraph 3, with the exception of pupils involved in special education programs and special individual hardship cases.

5. In regard to the Pupil Assignment Policy - 5117 and the proposed amendments thereto, the provisions for majority to minority transfers shall be retained, along with the provision for free school bus transportation, but no other transfers shall be allowed, except for pupils in special education programs and special individual hardship

cases. The June 1 deadline for such transfers shall be extended to a reasonable date certain so that all eligible students may have an opportunity to exercise their option and receive free school bus transportation. The Court is mindful that the Board of Education must have adequate time in which to make arrangements necessary for such transportation, and will consider this in determining the reasonableness of the date set.

6. The Winston-Salem/Forsyth County School Board shall file a revised plan for the operation of its schools in accordance with this Order within two (2) weeks of the date of this Order.

7. Within seven (7) days after the Board has filed the revised plan, the plaintiffs will file such exceptions, if any, as they desire.

8. Unless specific demand is made for further hearing within three days after the filing of exceptions or twenty-four days after the date of this Order, whichever shall first occur, the Court will enter an Order relative to the revised plan.

9. Since prompt action is essential, such order as shall be entered by this Court after the filing of the revised plan shall remain in full force and effect unless modified by an order of this Court or the United States Court of Appeals for this Circuit.

United States District Judge

July 17, 1970

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 14,694

RUDOLPH W. ADAMS, BRENDA ADAMS, and THEODORE R. ADAMS, JR., minors, by Theodore R. Adams, Sr., their father and next friend, et al.,

Appellants,

-versus-

SCHOOL DISTRICT NUMBER 5, ORANGEBURG COUNTY, SOUTH CAROLINA, a public body corporate, et al.,

Appellees.

Appeal from the United States District Court for the District of South Carolina, at Orangeburg. Charles E. Simons, Jr., District Judge.

No. 15,030

CYNTHIA D. GREEN, and others including Michael DeWayne Law and Kirk Anthony Law, infants, by Maynard Law and Vernice Law, their parents and next friends, et al.,

Appellants,

-versus-

SCHOOL BOARD OF THE CITY OF ROANOKE, a body corporate, Roanoke, Virginia, and E. W. Rushton, Superintendent, Roanoke City Schools, and E. J. Oglesby, Edward T. Justis and Alfred L. Wingo, individually and consisting of the pupil placement board of the Commonwealth of Virginia,

Appellees.

No. 15,110

CYNTHIA D. GREEN, et al.,

Appellees,

-versus-

THE SCHOOL BOARD OF THE CITY
OF ROANOKE, VIRGINIA, et al.,

Appellants.

Appeals from the United States District Court for the Western District of Virginia, at Roanoke. Ted Dalton, Chief Judge.

No. 15,044

CARLOTTA MOZELLE BREWER, et al.,

Appellants,

-versus-

THE SCHOOL BOARD OF THE CITY OF
NORFOLK, et al.,

Appellees.

No. 15,045

DAVID E. ALLGOOD, infant, etc.,
et al.,

Appellants,

-versus-

CARLOTTA MOZELLE BREWER, et al.,

Appellees.

No. 15,046

THE SCHOOL BOARD OF THE CITY OF NORFOLK, et al.,

Appellants,

-versus-

CARLOTTA MOZELLE BREWER, et al.,

Appellees.

Appeals from the United States District Court for the Eastern District of Virginia, at Norfolk. Walter E. Hoffman, Chief Judge.

No. 15,185

CATHERINE SCOTT, et al.,

Appellants,

-versus-

THE WINSTON-SALEM/FORSYTH COUNTY BOARD OF EDUCATION, et al.,

Appellees.

No. 15,186

CATHERINE SCOTT, et al.,

Appellees,

-versus-

WINSTON-SALEM/FORSYTH COUNTY BOARD OF EDUCATION, et al.,

Appellants.

No. 15,187

CATHERINE SCOTT, et al.,

Appellees,

-versus-

BOARD OF COUNTY COMMISSIONERS OF FORSYTH COUNTY,

Appellant.

No. 15,188

CATHERINE SCOTT, et al.,

Appellees,

-versus-

NORTH CAROLINA STATE BOARD OF EDUCATION and A. CRAIG PHILLIPS, State Superintendent of Public Instruction,

Appellants.

Appeals from the United States District Court for the Middle District of North Carolina, at Winston-Salem. Eugene A. Gordon, District Judge.

(Argued June 7, 1971. Decided June 10, 1971)

Before HAYNSWORTH, Chief Judge, BOREMAN, BRYAN, WINTER, CRAVEN, BUTZNER, and RUSSELL, Circuit Judges, sitting en banc.

Matthew J. Perry (Lincoln C. Jenkins, Jr.; Zack E. Townsend; Jack Greenberg and Michael Davidson on brief) for appellants in No. 14,694; D. W. Robinson (C. Walker Limehouse on brief) for appellees in No. 14,694; Kermit S. King on brief for amicus curiae, H.O.P.E., in No. 14,694.

S.W. Tucker (Henry L. Marsh, III, Hill, Tucker & Marsh; George W. Harris, Jr.; Jack Greenberg, James M. Nabrit, III, and Norman Chachkin on brief) for appellants in No. 15,030 and appellees in No. 15,110; James N. Kincanon, City Attorney, and H. Ben Jones, Jr., Assistant City Attorney, for appellees in No. 15,030 and appellants in No. 15,110.

Henry L. Marsh, III (S. W. Tucker, Hill, Tucker & Marsh; Victor J. Ashe; Louis R. Lucas; Jack Greenberg, James M. Nabrit, III, and Norman Chachkin on brief) for appellants in No. 15,044 and appellees in Nos. 15,045 and 15,046; Toy D. Savage, Jr. (Leonard H. Davis, City Attorney; Allan G. Donn, Willcox,

Savage, Lawrence, Dickson & Spindle on brief) for appellees in No. 15,044 and appellants in No. 15,046; M. T. Bohannon, Jr., for appellants in No. 15,045; David L. Norman, Attorney, Department of Justice (Jerris Leonard, Assistant Attorney General, Brian K. Landsberg and Walter W. Barnett, Attorneys, Department of Justice, on brief) for the United States in Nos. 15,044, 15,045 and 15,046.

J. LeVonne Chambers (Adam Stein, Chambers, Stein, Ferguson & Lanning; Conrad O. Pearson; Jack Greenberg, James M. Nabrit, III, and Norman Chachkin on brief) for appellants in No. 15,185 and appellees in Nos. 15,186, 15,187 and 15,188; William F. Womble (John L. W. Garrou and Womble, Carlyle, Sandridge & Rice on brief) for appellees in No. 15,185 and appellants in No. 15,186; P. Eugene Price, Jr., for appellant in No. 15,187; Ralph Moody, Deputy Attorney General (Robert Morgan, Attorney General of the State of North Carolina, and Andrew A. Vanore, Jr., Assistant Attorney General, on brief) for appellants in No. 15,188.

PER CURIAM:

On April 20, 1971, the Supreme Court released opinions in Swann v. Charlotte-Mecklenburg Board of Education, ____U.S.____

(1971) and companion cases. We immediately asked counsel in these cases to brief the questions presented in the light of Swann and Davis and set these appeals for argument before the full court on June 7, 1971. We are now convinced that all of these judgments must be vacated, except as noted, and we remand to the respective district courts with instructions to receive from the respective school boards new plans which will give effect to Swann and Davis.

It is now clear, we think, that in school systems that have previously been operated separately as to the races by reason of state action, "the district judge or school authorities should make every effort to achieve the greatest possible degree of actual desegregation, taking into account the practicalities of the situation." Davis, supra at _____. We remand these cases because the respective district judges did not have the benefit of the Supreme Court mandate that adequate consideration be given "to the possible use of bus transportation and split zoning." Davis, supra at _____. Wherever schools are "all or predominately of one race in a district of mixed population [there will be required] close scrutiny to determine that school assignments are not part of state-enforced segregation." Swann, supra at _____. Although the existence of "some small number of one-race, or

virtually one-race, schools within a district is not in and of itself the mark of a system which still practices segregation by law," Swann, supra at _____, both the school authority and the district judge must nevertheless be concerned with the elimination of one-race schools.

We have previously noted that Alexander v. Holmes County Board of Education, 396 U.S. 19 (1969), is a mandate for immediate action, and further delay in achieving desegregation in this circuit will not be tolerated. Nesbit v. Statesville City Board of Education, 418 F.2d 1040 (1969). Accordingly, we are again compelled to impose upon the respective district courts a time schedule to permit compliance with Swann and Davis prior to the opening of the school year in September, 1971.

Each school board shall submit a new plan to comply with Swann and Davis on or before July 1, 1971. Other parties may file responses on or before July 9, 1971.

Each district judge shall conduct a hearing on or before July 16, 1971, to enable him to determine the effectiveness of the proposed plan or its modification.

After a plan has been approved the

district court may hear additional objections or proposed amendments provided, however, that the parties shall comply with the approved plan in all respects while the district judge considers suggested modifications.

If a district judge finds that a plan submitted by the school board does not comply with the directions set forth in this opinion, he may appoint an educational expert to develop a plan for implementation in September, 1971. He may also direct the school board to cooperate with the expert by furnishing information and facilities for the prompt completion of his work. A reasonable fee for the expert and his expenses shall be assessed against the school board as costs.

The school authorities and the district court should consider the use of all techniques for desegregation, including pairing or grouping of schools, noncontiguous attendance zones, restructuring of grade levels, and the transportation of pupils.

If the district court approves a plan achieving less actual desegregation than would be achieved under an alternate proposed plan it shall find facts that are

thought to make impracticable the achieving of a greater degree of integration, especially if there remain any schools all or predominately of one race.

In No. 15,110, the judgment of the district court retaining Addison School is affirmed.

In No. 15,186, the order of the district court disapproving the transfer plan is affirmed.

In No. 15,187 and No. 15,188, the order of the district court joining the Board of County Commissioners, the North Carolina State Board of Education, and the Superintendent of Public Instruction is affirmed.

The Orangeburg plan may be fashioned on the alternate HEW plan with modifications and refinements that are necessary for its implementation, or upon some other plan that will meet the requirements of Swann and Davis.

In Roanoke, the court may approve the present junior and senior high school assignment plan. In redrafting the plan for the elementary schools, the school authorities and the district court may proceed according to the plan outlined by Dr. Michael J. Stolee, or modifications, extensions and refinements of this plan.

The Norfolk plan may be based on a revision of the Stolee C plan with necessary modifications and refinements, or the board may adopt some other plan of its choice that will meet the requirements of Swann and Davis.

In Winston-Salem/Forsyth County, the school board may fashion its plan on the Larson plan with necessary modifications and refinements or adopt a plan of its choice which will meet the requirements of Swann and Davis.

In No. 14,694, No. 15,030, No. 15,044 and No. 15,185 the appellants shall recover their costs. In No. 15,110, No. 15,045, No. 15,046, No. 15,186, No. 15,187 and No. 15,188, the appellees shall recover their costs.

Let the mandate issue forthwith.

Albert V. Bryan, Circuit Judge, concurring specially:

I join in the foregoing opinion-order on the assumption that the alternatives offered to the school authorities and the District Courts are true alternatives--that they need not be in the image of the Stolee or Larsen plans. Otherwise, I could not concur, for I think the only pattern the school authorities and the courts must observe is one honoring the prescriptions of Swann and Davis. So long as it is in keeping with these decisions, my understanding is that the formulation of a plan is entrusted to the discretion of the school authorities and not confined to the pattern of Stolee or Larsen.

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

WINSTON-SALEM DIVISION

CATHERINE SCOTT, et al, Plaintiffs	)	
v.	)	NO. C-174-WS-68
WINSTON-SALEM/FORSYTH COUNTY BOARD OF EDUCATION, et al, Defendants	)	

MEMORANDUM ORDER

GORDON, District Judge

The Court of Appeals for the Fourth Circuit has remanded this case with instructions that the Winston-Salem/Forsyth County Board of Education file a revised pupil assignment plan by July 1, 1971; that the plaintiffs may file responses on or before July 9, 1971; and that this Court conduct a hearing on or before July 16, 1971, to determine the effectiveness of the proposed plan or modifications

thereto. This schedule will be adhered to but the parties will keep the Court advised as to the possibility of the Court's consideration of the proposed plan prior to July 16, 1971. It is imperative that an acceptable plan be worked out for implementation prior to the beginning of the 1971-1972 school year.

Since the entry of the order by this Court on August 17, 1970, the United States Supreme Court rendered its decision in Swann v. Charlotte-Mecklenburg Board of Education, 28 L. Ed. 2d 554 (1971); Davis v. Board of School Commissioners of Mobile County, et al, 28 L. Ed. 2d 577 (1971), and the Court of Appeals for the Fourth Circuit handed down a per curiam order in this and other cases on June 10, 1971. These opinions and orders make it clear that because the State of North Carolina had state-enforced dual school systems prior to Brown, the pupil assignment plan of the Winston-Salem/Forsyth County Board of Education must be substantially revised to achieve the greatest possible degree of desegregation. The Court of Appeals in remanding this case quoted language from Davis, supra, that requires the district judge or school authorities to take into account

the practicalities of the situation. However, the significance of this statement is blunted by the court's holding that the Winston-Salem/Forsyth County Board of Education "may fashion its plan on the Larson Plan with necessary modifications and refinements," and that "[i]f the district court approves a plan achieving less actual desegregation than would be achieved under an alternate proposed plan, it shall find facts that are thought to make impractical the achieving of a greater degree of integration, especially if there remain any schools all or predominantly of one race." These statements must be construed in the light of the finding of the Supreme Court that the plan required of the Charlotte-Mecklenburg system is practical.

Despite the substantial difference between the findings of this Court, which formed the predicate for this Court's June 25, 1970 opinion in this case, and the findings which form the predicate of the decision of the District Court in Swann, it is apparent that it is as "practicable" to desegregate all the public schools in the Winston-Salem/Forsyth County system as in the Charlotte-

Mecklenburg system and that the appellate courts will accept no less. Consequently, this Court can approve no less. The costs of otherwise unnecessary additional transportation, the time consuming burden and inconvenience imposed on pupils to achieve this result, and the problems imposed upon the school board and its staff should be no greater or more burdensome in the Winston-Salem/Forsyth County system than in the Charlotte-Mecklenburg system.

The time between now and the opening of the 1971-72 school year is short. From the news media it appears that the Winston-Salem/Forsyth County Board of Education is continuing its good faith efforts to comply with the law and has directed its staff to devise a plan which would comply with the June 10, 1971 order of the Court of Appeals for the Fourth Circuit. It occurs to this Court that this expression of its understanding and interpretation of the order of the Court of Appeals may help dispel any illusions and assist the Winston-Salem/Forsyth County Board of Education in expeditiously developing an acceptable plan.

It is ORDERED that the parties

adhere to the schedule set forth in the mandate of the Court of Appeals and make a good faith effort to expedite the filing of a plan so that it might be considered by the Court no later than July 9, 1971.

/s/ Eugene A. Gordon
United States District Judge

June 22, 1971

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

WINSTON-SALEM DIVISION

CATHERINE SCOTT, et al,	)	
	)	
Plaintiffs	)	
	)	
v.	)	No. C-174-WS-68
	)	
WINSTON-SALEM/FORSYTH COUNTY BOARD OF EDUCATION, et al,	)	
	)	
Defendants	)	

MEMORANDUM ORDER

GORDON, District Judge

This cause was heard on the 16th day of July, 1971, pursuant to the June 10, 1971, mandate of the Court of Appeals after notice duly given to the parties. The purpose of the hearing was to enable the Court to determine the effectiveness of the "Revised Pupil Assignment Plan for the 1971-72 School Year," which

was submitted to this Court by the Winston-Salem/Forsyth County Board of Education on June 29, 1971, in accordance with the mandate of the Court of Appeals and the June 22, 1971, Memorandum Order of this Court.

After carefully considering the Pupil Assignment Plan, the response of the plaintiffs, and hearing the parties with respect to the Plan, the Court finds and concludes that the Plan complies with the mandate and order hereinabove referred to.

Actually, the Plan submitted is strikingly similar in essential aspects to the Larsen Plan which the plaintiffs asked this Court and the Court of Appeals to order implemented. The plaintiffs complain that the proposed Plan fails to designate the former Atkins Senior High School as a school for the 11th and 12th grades (under the proposed Plan Atkins will be used for the 9th and 10th grades), and that an undue busing burden is cast upon the black elementary students. The record does not substantiate the allegations of invidious discrimination in either respect contended by the plaintiffs. There is no way to apportion the black pupils, which pupils in the main are concentrated in the northern and eastern sections of the City of Winston-Salem, among the outlying

schools without busing them there. No black schools will be closed under the Plan. The mechanics of integration are matters for the Board and not the courts.

Accompanying the proposed Plan filed with the Court was a copy of a Resolution adopted by the Winston-Salem/Forsyth County Board of Education, setting forth the objections of the Board to its being required to implement the Plan, which resolution in pertinent part reads:

> "RESOLVED, further, that the Board takes this action in a good faith effort to comply with the orders above referred to; nevertheless, the Board feels compelled to advise the Court that even though this is the least expensive, least disruptive, least burdensome and most equitable plan the Board has been able to devise and still accomplish the required objective of achieving a racial balance in the public schools of Forsyth County which will be acceptable to the Court, it is not a sound or desirable plan, and should not be required, because the residential pattern of Forsyth County makes the accomplishment of such objective impossible without massive, expensive busing which

imposes an otherwise unnecessary financial burden on the public and a tremendous burden of inconvenience and time consumption, on pupils and parents and traffic hazard on pupils; further, this Board does not know how, or whether, it will be able to provide the transportation required under this plan; at the present time it has neither the buses nor the funds to do so; in fact, the Board is still working to obtain at least $1,300,000.00 of additional monies which are desperately needed for the 1971-72 fiscal year in order to provide a satisfactory educational program, completely apart from any funds that might be required for additional busing to achieve 'complete desegregation.'

"Last year's order to cluster eight schools required approximately 22 additional buses and the busing of approximately 1800 additional pupils. The attached plan will require approximately 314 additional buses to transport approximately 15,821 additional pupils. The number of additional buses required can be reduced by using staggered school opening and closing schedules, and

adult drivers, but even if that is done approximately 157 additional buses will be needed. This additional busing will require pupils to spend an average of one hour per pupil every school day on otherwise unnecessary bus travel. These are some, but by no means all, of the inconveniences, burdens and impracticalities involved."

This Court in its Memorandum and Order of June 25, 1970, and its Order of August 17, 1970, set out its findings and conclusions with respect to pupil assignment in the Winston-Salem/Forsyth County School System, and the Larsen Plan proposed by the plaintiffs and discussed the burdens and impracticalities which would necessarily attend the implementation of such a Plan. Notwithstanding said findings and conclusions, this Court must comply with the June 10, 1971, mandate of the Court of Appeals under which this case, on appeal, was remanded to this Court, and must accordingly direct the Board of Education to proceed with the implementation of the "Revised Pupil Assignment Plan for the 1971-72 School Year," hereinabove referred to.

NOW, THEREFORE, IT IS ORDERED AND DECREED:

1. That the Winston-Salem/Forsyth County Board of Education proceed immediately to implement the "Revised Pupil Assignment Plan for the 1971-72 School Year," which was submitted to the Court June 29, 1971, pursuant to the June 10, 1971, mandate of the Court of Appeals for the Fourth Circuit and the June 22, 1971, Order of this Court, and that said Plan be put into effect as of the opening of the 1971-72 school year.

2. That the request of the Winston-Salem/Forsyth County Board of Education asking that the Court not require the implementation of said Plan is hereby denied.

3. That realizing time is of the essence and problems concerning pupil assignments will likely arise when the Board attempts to actually implement the Plan, the Board has plenary power to make minor changes in the Plan so long as the changes do not affect the racial ratio in any school more than 5 per cent from that reflected by Chart 7 of the Plan.

4. That jurisdiction of this cause is retained until further orders of the Court.

/s/ Eugene A. Gordon
United States District Judge

July 26, 1971

RESOLUTION ADOPTED, UNANIMOUSLY, BY THE
WINSTON-SALEM/FORSYTH COUNTY BOARD OF EDUCATION
JUNE 26, 1971

RESOLVED that in order to comply with the June 10, 1971, mandate of the Court of Appeals for the Fourth Circuit and the June 22, 1971, order of the United States District Court, the attached "Revised Pupil Assignment Plan for the 1971-72 School Year", be submitted to the United States District Court, and, if ordered by the Court, be implemented as of the commencement of the 1971-72 school year.

RESOLVED, further, that the Board takes this action in a good faith effort to comply with the orders above referred to; nevertheless, the Board feels compelled to advise the Court that even though this is the least expensive, least disruptive, least burdensome and most equitable plan the Board has been able to devise and still accomplish the required objective of achieving a racial balance in the public schools of Forsyth County which will be acceptable to the Court, it is not a sound or desirable plan, and should not be required, because the residential pattern of Forsyth County makes the accomplishment of such objective impossible without massive, expensive busing which imposes an otherwise unnecessary financial burden on the public and a tremendous burden of inconvenience and time consumption, on pupils and parents and traffic hazard on pupils; further, this Board does not know how, or whether,it will be able to provide the transportation required under this plan; at the present time it has neither the buses nor the funds to do so; in fact, the Board is still working to obtain at least $1,300,000 of additional monies which are desperately needed for the 1971-72 fiscal year in order to provide a satisfactory educational program, completely apart from any funds that might be required for additional busing to achieve "complete desegregation."

Last year's order to cluster eight schools required approximately 22 additional buses and the busing of approximately 1800 additional pupils. The attached plan will require approximately 314 additional buses to transport approximately 15,821 additional pupils. The number of additional buses required can be reduced by using staggered school opening and closing schedules, and adult drivers, but even if that is done approximately 157 additional buses will be needed. This additional busing will require pupils to spend an average of one hour per pupil every school day on otherwise unnecessary bus travel. These are some, but by no means all, of the inconveniences, burdens and impracticalities involved.

CERTIFICATION

I, Marvin M. Ward, Secretary to the Winston-Salem/Forsyth County Board of Education, certify that the foregoing resolution was adopted by the Winston-Salem/Forsyth County Board of Education on June 26, 1971. Votes for: 8. Votes against: 0.

Marvin M. Ward

Marvin M. Ward

REVISED PUPIL ASSIGNMENT PLAN

FOR THE 1971-72 SCHOOL YEAR

Submitted By The
Winston-Salem/Forsyth County Board of Education
To The Court
Pursuant To Orders
Of
The United States Court of Appeals
And
The United States District Court

June, 1971

REVISED PUPIL ASSIGNMENT PLAN
FOR THE
1971-72 SCHOOL YEAR

Introductory Statement

This revision of the pupil assignment plan for the Winston-Salem/Forsyth County School System has been made in order to comply with the June 10, 1971 mandate of the Court of Appeals for the Fourth Circuit and the June 22, 1971 Order of the United States District Court for the Middle District of North Carolina in the case of Scott, et al v. Winston-Salem/Forsyth County Board of Education, et al.

The history of prior action by this Board to achieve a nondiscriminatory, unitary school system, in compliance with law, is a matter of record (Scott v. Winston-Salem/Forsyth County Board of Education [1970], 317 F. Supp. 453).

This revision, as now required by the Court, goes beyond that, and, utilizing the various techniques endorsed by the Court such as pairing, clustering, grouping, non-contiguous zones, transportation, and change of grade structure, makes assignments on a racial basis so as to achieve a racial balance throughout the system which will be acceptable to the Court.

This revised plan is set out and explained herein and on a map and overlay, identified by the same title, both of which are incorporated in and made a part hereof.

Plan

This plan accomplishes the required racial balance through the use of a 4-2 (elementary) and 2-2-2 (secondary) grade structure, geographic school zones and feeder plan.

Under this plan, on the basis of one's place of residence one can ascertain the school to which a pupil will be assigned from the first through the twelfth grades. Further, those assigned to the same school in the first grade are, under this plan, assigned to the same schools at the various grade levels, through all twelve grades.

Elementary School Zones

Elementary school zones are established as shown on the map of this "Revised Plan". Appendix "A" lists all elementary schools in alphabetical order and describes the change, if any, made in each elementary school zone boundary from the present zone boundary. Appendix "B" lists those elementary school zones for which "interior" lines have been drawn to divide the zones into parts "A" and "B", and describes the

location of such interior lines.

Elementary School Organization

Chart No. 1 shows the elementary school groupings and pairings. These are also shown on the map of the Revised Plan by color-coding.

Where two schools (serving grades 1-4) are grouped with one other (serving grades 5-6), the pupils residing in the "Grades 5-6" school zone will attend one of the "Grades 1-4" schools for grades 1 through 4, along with the pupils residing in that "Grades 1-4" school zone. Then, for grades 5 and 6, the pupils residing in the two "Grades 1-4" school zones will attend the "Grades 5-6" school along with the pupils residing in the "Grades 5-6" school zone. For example, Sherwood Forest, Whitaker and Kimberley Park have been grouped in this manner during the 1970-71 school year and will continue to be so grouped under this plan, with Sherwood Forest and Whitaker being "Grades 1-4" schools and Kimberley Park being a "Grades 5-6" school.

With respect to each elementary school zone which is grouped with two others (such as the Kimberley Park zone in the grouping above referred to) interior lines have been drawn through the zone, dividing it into parts A and B and references have been made on the map and in the charts to indicate how the pupils residing in that zone will be assigned to each of the two other schools with which that school zone is grouped. It is possible that these "interior" lines will have to be modified somewhat as more specific information is obtained during the summer concerning the place of residence of pupils who will be entering the schools of each group, and particularly those who will be entering the first grade, this fall but it is hoped that little if any change will have to be made in them in order to approximate the total enrollment and racial ratios for each school in the particular group as shown on the attached charts. If the Court orders implementation of this plan it will be essential -- and the Board will so understand unless the Court orders otherwise -- that the Board has authority without further Court order or approval, to make such modifications in these "interior" lines as the Board finds necessary and practicable in order to approximate the total enrollments and racial ratios for each school within a particular group as shown on the attached charts.

Feeder Pattern

The following charts:

Chart No. 2 - North Forsyth District
Chart No. 3 - East Forsyth District
Chart No. 4 - Parkland District
Chart No. 5 - West Forsyth District
Chart No. 6 - Reynolds District

show the feeder pattern in a manner so that one can tell which schools a pupil will attend from the first grade right on

through the twelfth grade.

It has been found to be impracticable to try to show all of the information we would like to have on each of these charts. The following information explains these charts and amplifies the information shown on them:

a. The "capacity" figures are the normal rated capacity of the school buildings without any mobile units.

b. The "enrollment" figures are the staff's estimates of the total enrollment anticipated at the particular school under this plan.

c. The "%B" figures are the staff's estimates of the percentage of black pupils anticipated at the particular school under this plan.

d. Where one school feeds, directly or indirectly, into two different "11-12 grade" schools, the name of that school appears on two different charts. For example, Mt. Tabor (a 9-10 school under this plan) is shown on both Chart 2 (North Forsyth) and Chart 6 (Reynolds), because those pupils who attend Mt. Tabor from the Old Richmond zone will go on to North Forsyth (11-12); whereas those who attend Mt. Tabor from the Bolton, Speas, North Elementary and Cook zones will go on to Reynolds (11-12). For another example, Skyland (a 5-6 school under this plan) appears on both Chart 3 (East Forsyth) and Chart 6 (Reynolds), because those pupils in the Skyland zone who attend Kernersville (1-4), Skyland (5-6), Kernersville Junior (7-8) and Carver (9-10), go on to East Forsyth (11-12); whereas those pupils in the Skyland zone who attend Ardmore (1-4), Skyland (5-6), Wiley (7-8) and Atkins (9-10), go on to Reynolds (11-12).

e. Where one has a child who will be entering a grade above the fourth grade, the school to which such child will be assigned under this plan may be ascertained by locating the "Elementary School Zone" of the child's place of residence in the left column of one of the above charts (Charts Nos. 2 through 6) and by then following the feeder pattern for that elementary school zone across to the child's present grade level. For example, if a pupil lives in the Oak Summit Elementary School zone and will be going into the 9th grade this fall, he can, by referring to Chart No. 2 (North Forsyth), see that he will be assigned to Atkins for the 9th and 10th grades. For another example, if a pupil lives in the Union Cross Elementary School zone and will be entering the 9th grade, he can, by referring to Chart No. 4 (Parkland), see that he will be assigned to Hill for the 9th and 10th grades.

If a person is uncertain as to the Elementary School Zone of his place of residence, it may be ascertained by reference to the map of this "Revised Plan" and, if necessary, by reference to the descriptions in one or both of the appendices to this plan.

The overlay to the map of this "Revised Plan" also shows the feeder pattern for the secondary schools, that is, from the 7-8 grade schools to the 9-10 grade schools and from the 9-10 grade schools to the 11-12 grade schools.

Statistical Data

Chart No. 7 gives statistical data listing all regular elementary and secondary schools, the grades to be served by each; the estimated black, white, percent black, and total enrollment of each, the normal capacity of each school and the estimated number of mobile units, if any, that will be needed at each school. The number of mobile units listed is the estimated total of such units which will be required, not additional units.

Effects

The effects of this plan include the following:

1. Grade Organization

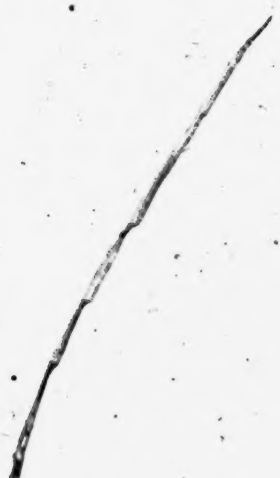
The present 6-3-3 grade organization is changed to 4-2-2-2-2. This grade organization will result in numerous instructional changes, especially in grades 9 and 10. Pupils who start school together in the first grade will attend the same schools through all twelve grades. The school structure will be: Elementary: 4-2; Secondary: 2-2-2.

2. Racial Mix

In each school there is approximately the same racial balance at all grade levels, ranging from approximately 18% black-82% white to approximately 36% black-64% white at any given school.

3. Utilization of Facilities

Maximum utilization of classroom facilities is achieved through this plan. The number of mobile units is reduced from approximately 114 to 34. Two elementary schools will be converted to other uses. Plans are being made to use Moore as a laboratory school, and Fourteenth Street as a pre-school child development center.



4. Feeder Patterns

The feeder pattern, discussed in a prior part of this plan, is necessarily changed for a majority of the schools under this plan.

The reasons for generally having the centrally located pupils "move out" for grades 1-4, 7-8 and 11-12 and for having the pupils in outlying areas "move in" for grades 5-6 and 9-10, are:

a. To balance as nearly as possible the time all pupils will have to spend on buses. It takes a long time to pick up a bus load of pupils in an outlying area and transport them to an outlying school because of the distance involved. A bus load of those who are centrally located can be picked up with one to three stops and can then be transported to an outlying school about as quickly as the others can be picked up and transported to the same outlying school.

b. There is no other practical way to achieve the required racial balance, since approximately 28% of the pupils in the school system are black and a great majority of them are centrally located. These center-city pupils must be assigned on a racially balanced basis throughout the school system with white pupils, who make up 72% of the school systems pupil population.

5. Transportation

This plan will necessitate transportation of approximately 15,821 additional pupils. Approximately 314 additional buses will be needed to transport these pupils and to provide the same quality of school bus service as is now being provided; that is, with student drivers and without having to stagger school opening and closing schedules. The number of additional buses required can be reduced by using staggered school opening and closing schedules and adult drivers. Even if that is done, approximately 157 additional buses will be needed.

6. Other Effects

There will be numerous other effects on pupils and parents, on the instructional program, on athletic programs, and on other extra curricular activities.

Special Education Programs

The Winston-Salem/Forsyth County Board of Education also operates the following special education programs. The pupils in these programs are assigned on an individual basis.

Pre-School Child Development Center

This program provides an eleven-month readiness experience for approximately 330 five-year-old children who live in the target area served by Title I of the Elementary and Secondary Education Act. This program has been housed at Carver School, but Carver will now be fully utilized as a 9-10 grade school. Under this plan, the Fourteenth Street School will be converted for use as the Pre-School Child Development Center. This program will utilize about two-thirds of this building, leaving about one-third for offices which will have to be moved out of Paisley.

Moore Laboratory School

This is a new laboratory school for grades 1-6, which is designed to experiment with new and innovative approaches to elementary education. It will serve some 600 children selected from applicants from throughout the County. The student body will be as representive as possible of the entire school system in geography, racial mix, and achievement levels.

Programs for the Mentally Retarded

Special classes are provided for the trainable and educable mentally retarded in a number of schools throughout the system. There are approximately 1,000 pupils in this program. Children progress through these programs to Central High School, the Special Education and Rehabilitation Center for the school system.

Program for the Academically Talented

A special program for the academically talented is provided beginning in grade three. Approximately 60 children are chosen annually from rising third graders throughout the school system. Students in this program will attend school in the following pattern:

Grades 1 - 6	Brunson
Grades 7 - 8	Wiley
Grades 9 - 10	Paisley
Grades 11-12	Reynolds

Program for Emotionally Disturbed

One class for emotionally disturbed pupils of elementary school age is operated. Children from throughout the system may be referred to this class. The class will be located at Ardmore Elementary School.

CHART #1

ELEMENTARY SCHOOL ORGANIZATION

ELEMENTARY SCHOOL ZONE	SCHOOL 1 - 4	SCHOOL 5 - 6
Ardmore Skyland B	Ardmore	Skyland
Kernersville Elem. Skyland A	Kernersville Elem.	
Bolton North Elem. B	Bolton	North Elem.
North Elem. A Sedge Garden	Sedge Garden	
Brown A Clemmons	Clemmons	Brown
Brown B Lewisville	Lewisville	
Cook A Speas	Speas	Cook
Cook B Vienna	Vienna	
Konnoak South Park A	Konnoak	South Park
Latham South Park B	Latham	
Fairview B Oak Summit	Oak Summit	Fairview
Fairview A Rural Hall	Rural Hall	
Kimberley Park A Sherwood Forest	Sherwood Forest	Kimberley Park
Kimberley Park B Whitaker	Whitaker	
Forest Park Waughtown	Forest Park	Waughtown
Diggs Griffith Elem.	Griffith Elem.	Diggs

ELEMENTARY SCHOOL ZONE	SCHOOL 1 - 4	SCHOOL 5 - 6
Mebane, South Fork	South Fork	Mebane
Easton, Union Cross	Union Cross	Easton
Lowrance, Old Town	Old Town	Lowrance

	SCHOOL 1 - 3	SCHOOL 4 - 6
Ibraham, Walkertown A; Petree, Walkertown B	Walkertown Elem.	Ibraham, Petree

Grades 1 - 6

Brunson
Mineral Springs
Old Richmond

Chart No. 2

NORTH FORSYTH DISTRICT

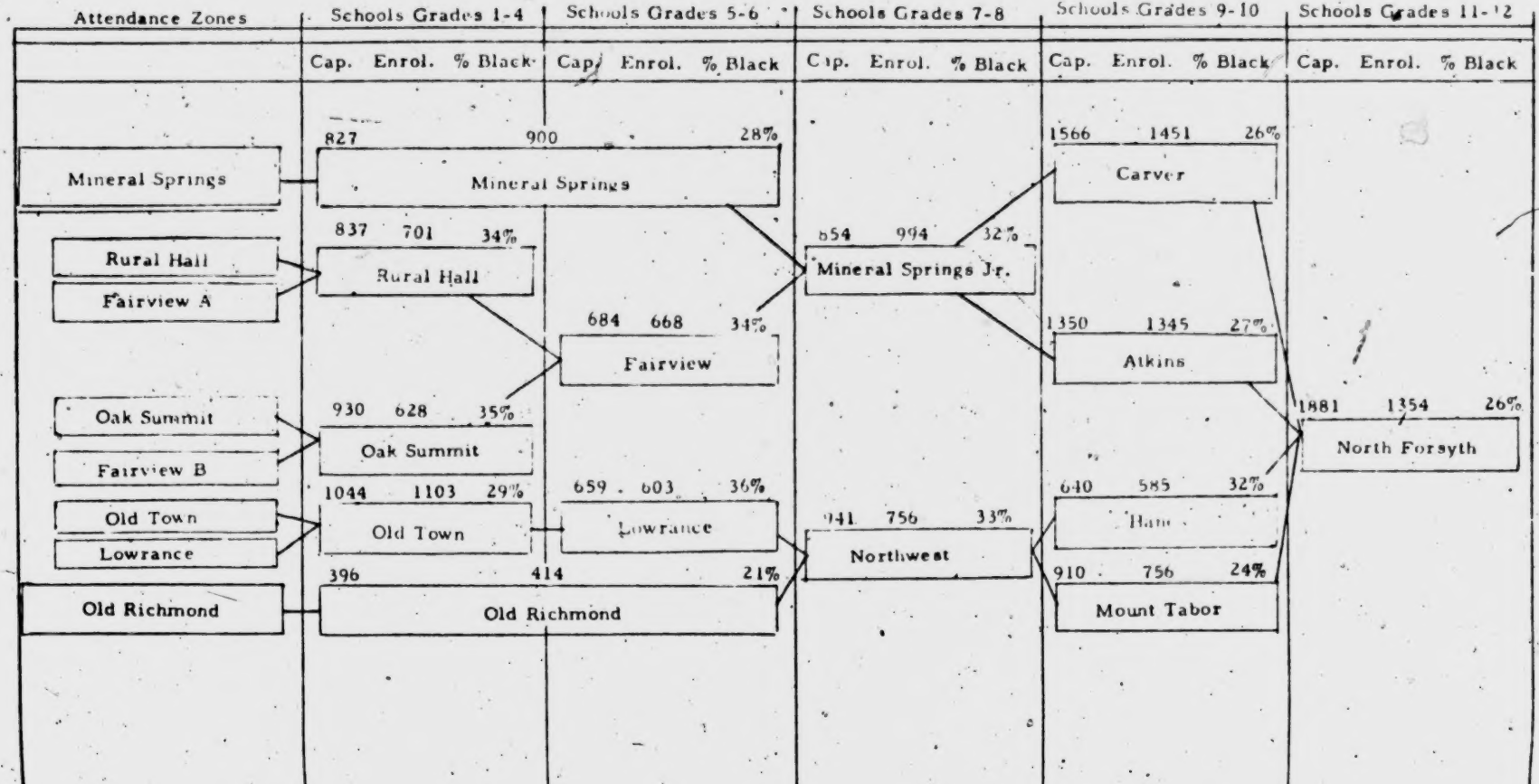


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Chart No. 3

EAST FORSYTH DISTRICT

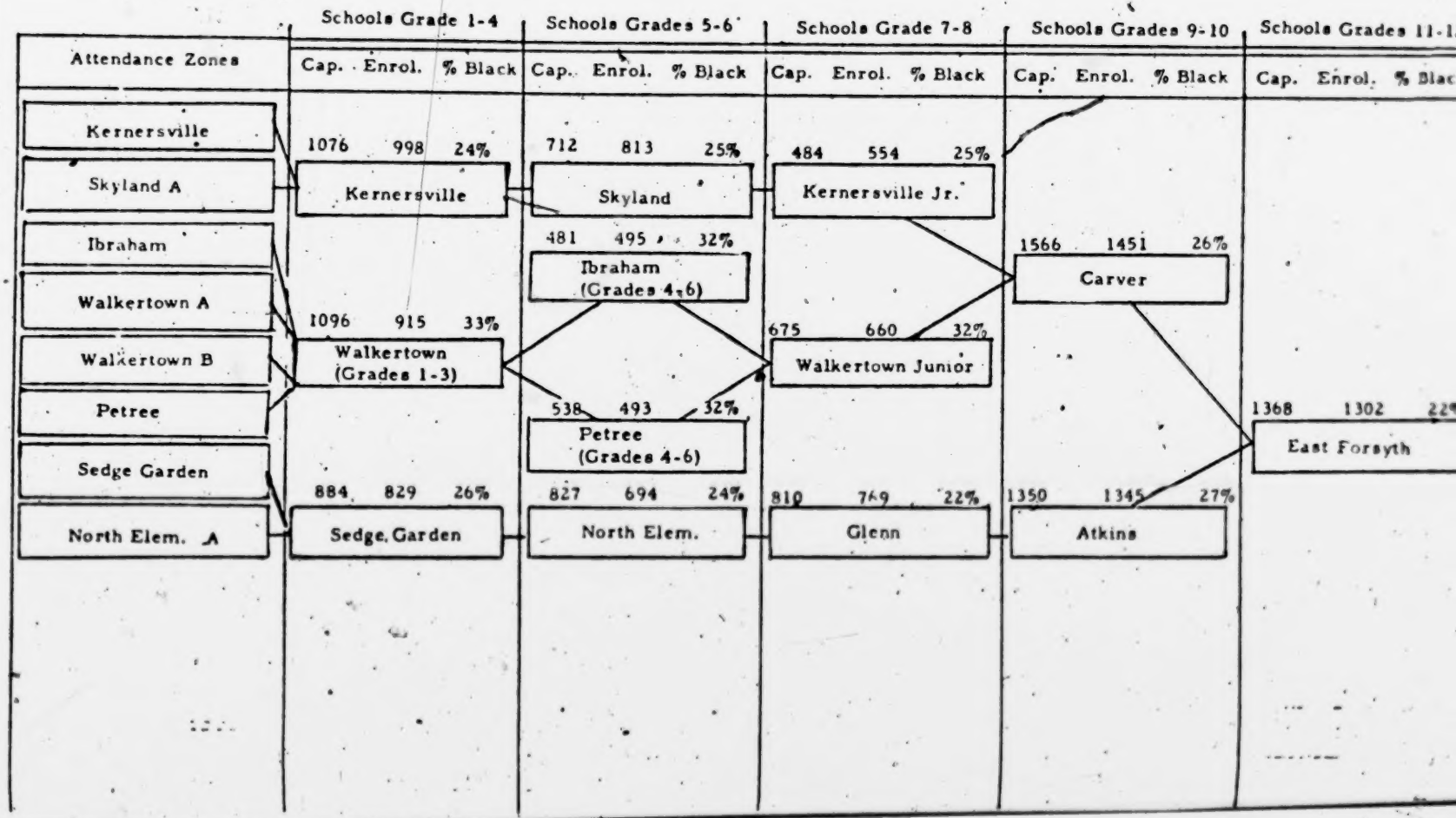
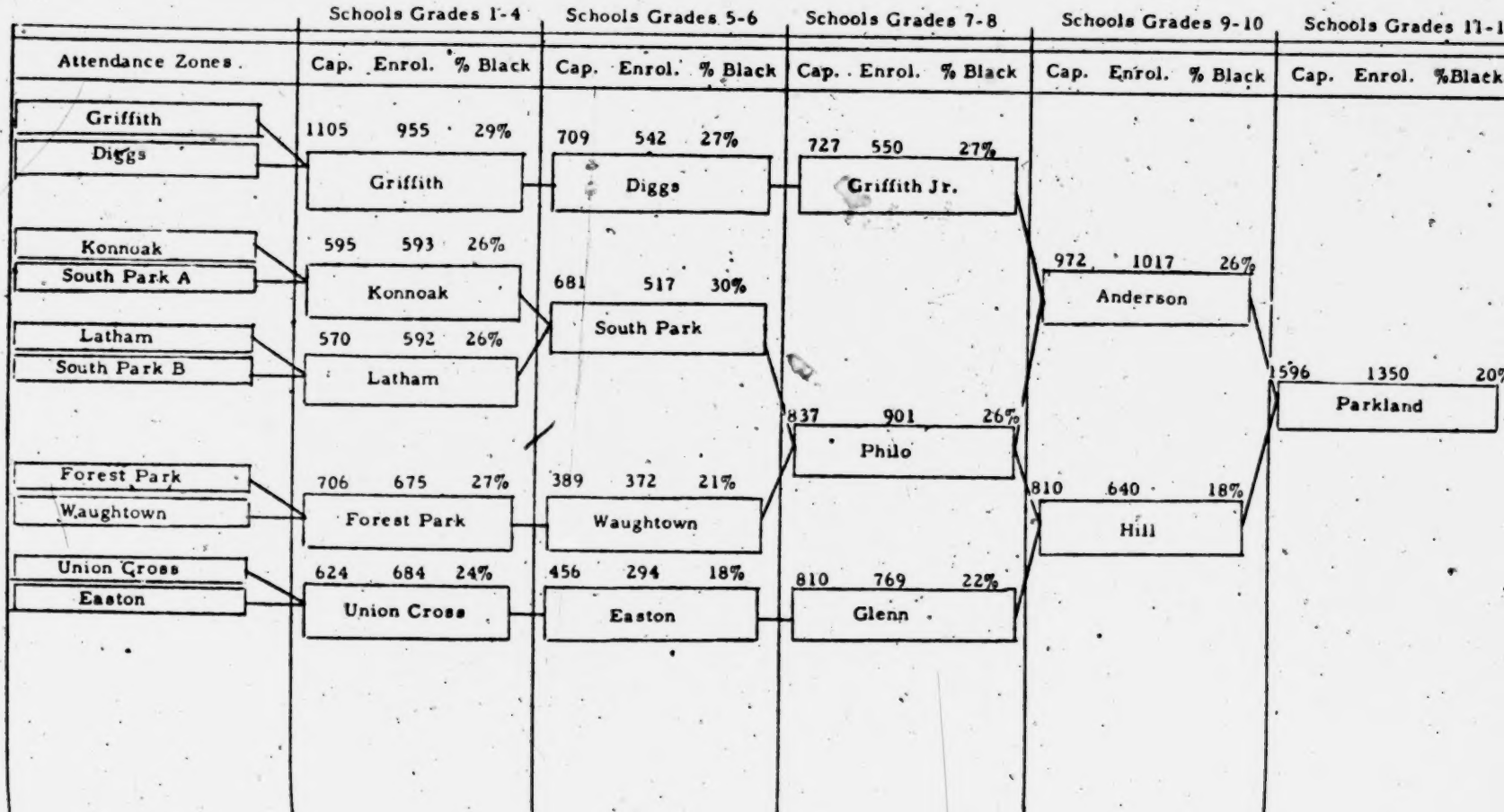


Chart No. 4

PARKLAND DISTRICT



WEST FORSYTH DISTRICT

Chart No. 5

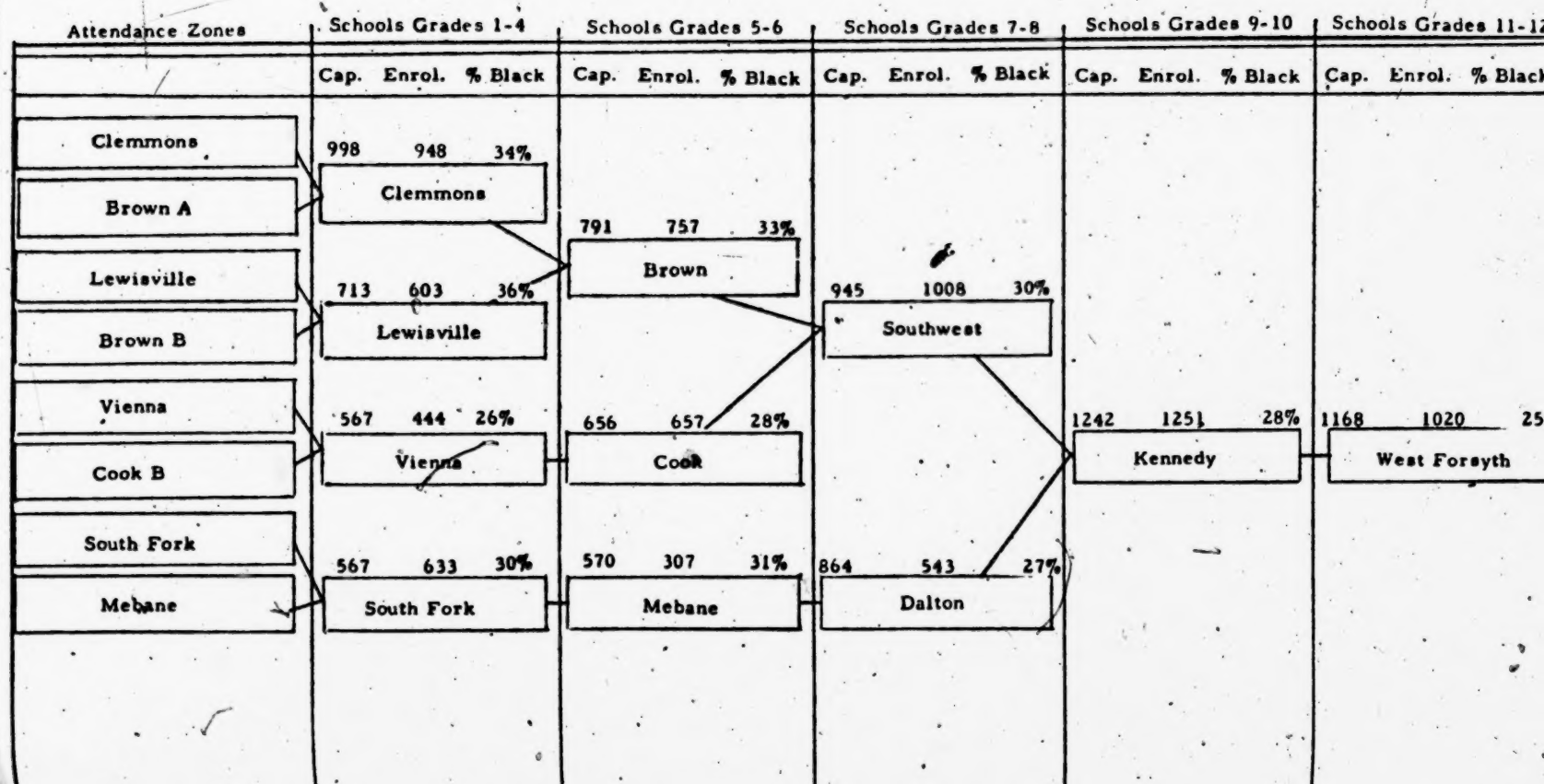


Chart No. 6

REYNOLDS DISTRICT

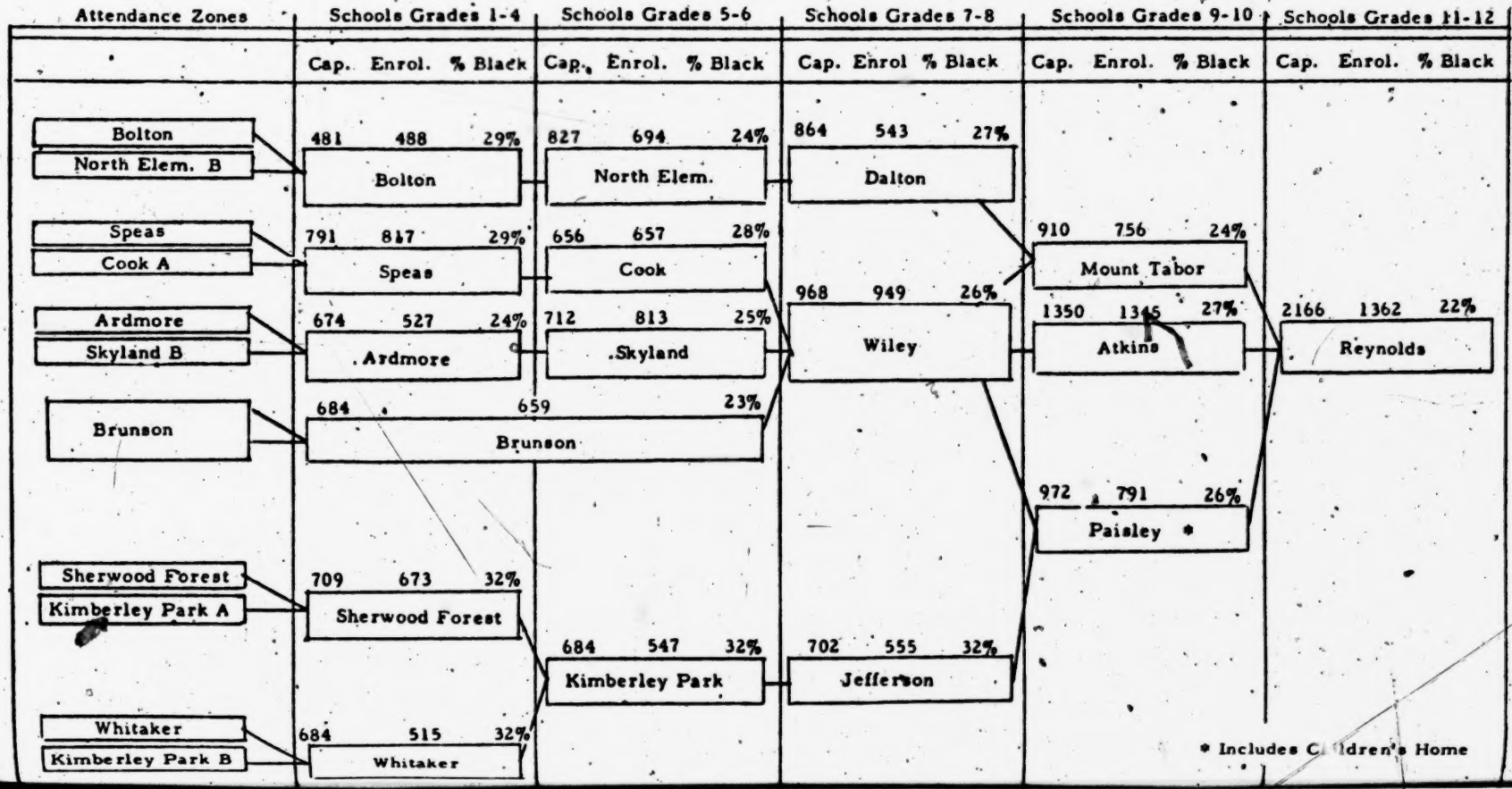


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Chart #7

WINSTON-SALEM/FORSYTH COUNTY SCHOOLS

STATISTICAL DATA

1971-1972

School	Grades	Estimated Enrollment Black	White	% Black	Total	Building Capacity	Mobile Units
Ardmore	1-4	126	401	24	527	674	
Bolton	1-4	140	348	29	488	481	
Brown	5-6	247	510	33	757	791	
Brunson	1-6	151	508	23	659	684	
Clemmons	1-4	324	624	34	948	998	
Cook	5-6	182	475	28	657	656	
Diggs	5-6	145	397	27	542	709	
Easton	5-6	54	240	18	294	456	
Fairview	5-6	228	440	34	668	684	
Forest Park	1-4	184	491	27	675	706	
Griffith	1-4	281	674	29	955	1105	
Ibraham	4-6	160	335	32	495	481	1
Kernersville	1-4	240	758	24	998	1076	
Kimberley Park	5-6	175	372	32	547	684	
Konnoak	1-4	155	438	26	593	395	
Latham	1-4	152	440	26	592	570	1
Lewisville	1-4	217	386	36	603	713	
Lowrance	5-6	215	388	36	603	659	
Mebane	5-6	94	213	31	307	570	
Mineral Springs	1-6	252	648	28	900	827	3
North Elementary	5-6	168	526	24	694	827	
Oak Summit	1-4	217	411	35	628	930	
Old Richmond	1-6	88	326	21	414	396	1
Old Town	1-4	322	781	29	1103	1044	2
Petree	4-6	160	333	32	493	538	
Rural Hall	1-4	235	466	34	701	837	
Sedge Garden	1-4	216	613	26	829	884	
Sherwood Forest	1-4	218	455	32	673	709	
Skyland	5-6	200	613	25	813	712	4
South Fork	1-4	192	441	30	633	567	3
South Park	5-6	156	361	30	517	681	
Speas	1-4	235	582	29	817	791	1
Union Cross	1-4	165	519	24	684	624	2

School	Grades	Estimated Enrollment Black	White	% Black	Total	Building Capacity	Mobile Units
Vienna	1-4	118	326	26	444	567	
Walkertown	1-3	299	616	33	915	1096	
Waughtown	5-6	77	295	21	372	389	
Whitaker	1-4	165	350	32	515	684	
Dalton	7-8	150	393	27	543	864	
Glenn	7-8	168	601	22	769	810	
Griffith Jr.	7-8	147	403	27	550	727	
Jefferson	7-8	177	378	32	555	702	
Kernersville Jr.	7-8	136	418	25	554	484	3
Mineral Springs Jr.	7-8	319	675	32	994	854	6
Northwest	7-8	246	510	33	756	941	
Philo	7-8	236	665	26	901	837	3
Southwest	7-8	307	701	30	1008	945	2
Walkertown Jr.	7-8	210	450	32	660	675	
Wiley	7-8	249	700	26	949	968	
Anderson	9-10	265	752	26	1017	972	2
Atkins	9-10	358	987	27	1345	1350	
Carver	9-10	377	1074	26	1451	1566	
Hanes	9-10	189	396	32	585	640	
Hill	9-10	114	526	18	640	810	
Kennedy	9-10	350	901	28	1251	1242	
Mt. Tabor	9-10	181	575	24	756	910	
Paisley	9-10	203	588	26	791	972	
East	11-12	288	1014	22	1302	1368	
North	11-12	354	1000	26	1354	1881	
Parkland	11-12	273	1077	20	1350	1596	
Reynolds	11-12	301	1061	22	1362	2166	
West	11-12	253	767	25	1020	1168	

Appendix A

Description of Elementary School Zone Changes

Ardmore - Addition of portion of former Moore zone. Beginning at the West boundary of the existing Ardmore zone at corner of Magnolia and Maplewood; thence West on Maplewood to Stratford Road; thence Northeast on Stratford Road to Oakwood; thence due South to Westfield; thence East on Westfield to the existing Ardmore boundary at Miller Street.

Bolton - Addition of portion of former Moore zone. Beginning at the corner of Old Vineyard Road and Stratford Road, the North boundary of the existing Bolton zone; thence Northeast on Stratford Road to a point in line with Maplewood Avenue extended; thence East on Maplewood to Magnolia; thence South on Magnolia to the existing Northeast corner of the Bolton district at the corner of Magnolia and Hawthorne.

Brown - (1) See Mebane for South portion of Brown zone added to Mebane. (2) Addition of portion of former Fourteenth Street zone. Beginning at the East boundary of the Brown zone on Cleveland Avenue midway between 17th and 18th Street; thence Eastwardly along former 14th Street boundary to Dunleith Avenue; thence South on Dunleith to 11-1/2 Street; thence West on 11-1/2 to the existing East boundary of Brown zone at Cleveland.

Brunson - Addition of portion of former Moore zone. Beginning at the Southeastern boundary of the Brunson zone at the intersection of Miller Street and Interstate 40; thence Westwardly on Interstate 40 to Stratford; thence Southwest on Stratford

to Oakwood; thence due South on Westfield; thence East on Westfield to Miller Street; thence North on Miller to Queen; thence East on Queen to the existing Brunson boundary line at the Baptist Hospital.

Clemmons - See Griffith for East portion of Clemmons zone added to Griffith.

Cook - Addition of portion of North Elementary zone. Beginning at the Southeast corner of Cook boundary on Oak Street just North of 8th Street; thence South on Oak to 7th; thence East on 7th to Liberty; thence Northeast on Liberty to Patterson; thence North on Patterson to 14th Street; thence West on 14th to Derry; thence North on Derry to Belo; thence West on Belo to Oak; thence South on Oak to 14th.

Diggs - Beginning at Willow Street and the North-South Expressway; thence Northwestwardly along Willow Street and Willow Street extended to Salem Creek; thence Eastwardly along Salem Creek to Stadium Drive; a boundary of Forest Park School zone; thence Southwardly along Stadium Drive to a corner of the Forest Park zone; thence Westwardly along the Forest Park zone line to the North-South Expressway; thence Northwardly along the North-South Expressway to the Southern boundary of the Diggs School property; thence Westwardly, Northwardly and Eastwardly around the Diggs School property to the North-South Expressway; thence Northwardly along the North-South Expressway to Willow Street, the place of beginning.

Easton - See Forest Park for North portion of Easton zone added to Forest Park.

Fairview - See Petree for Eastern portion of Fairview zone added to Petree.

Forest Park - Addition of Northern portion of Easton zone. Beginning at the existing junction of the boundaries of Forest Park, Waughtown and Easton zones on Clemmonsville Road; thence Southwardly on Clemmonsville Road to Morsine; thence Westwardly on Morsine to Winston-Salem Southbound Railroad; thence Northwardly along Winston-Salem Railroad to existing Southwest corner of the Forest Park zone.

Fourteenth Street - Being converted to pre-school program. See Brown and Skyland for portions of Fourteenth Street zones added to Brown and Skyland.

Griffith - Addition of portion of Clemmons zone. Beginning at the South corner of the Bolton zone in the West line of existing Griffith zone, on Salem Creek; thence Northwardly along the West line of the Bolton zone to U. S. Highway #158; thence Southwestwardly along U. S. 158 to the intersection of Jonestown Road and U. S. 158; thence due South to a creek; thence Southwardly with the creek to the existing Griffith zone line at Salem Creek.

Ibraham - No change.

Kernersville - No change.

Kimberley Park - No change.

Konnoak - No change.

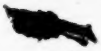
Latham - No change.

Lewisville - No change.

Lowrance - See North for Southern portion of Lowrance added to North.

Mebane - Beginning at the intersection of Vine and 5th Street; thence East on 5th to Interstate 40; thence due South to the Southern Railroad track; thence Westwardly with the railroad to a point due North of the intersection of Reynolds Park Road and Stadium Drive, being the Northwest corner of the existing Forest Park zone line; thence Southwardly along the Forest Park zone line to Salem Creek; thence West along Salem Creek to Willow Street extended, the Northwest corner of the new Diggs zone; thence Northwest along the line of Willow Street extended to the Eastern boundary of the Latham zone; thence North along the Eastern line of the Latham zone to Interstate 40; thence North along the East boundary of the Brunson zone line to 5th Street, the place of beginning.

Mineral Springs - Addition of portion of the Oak Summit zone, Beginning at a point 200 feet South of the intersection of Old Rural Hall Road and Pleasant View; thence Northeast along a line parallel to and Southwardly from Pleasant View Drive to the intersection of Baux Mountain Road and Jordon Drive; continuing thence Northeastwardly in a straight line to the existing West line of the Prince Ibraham zone at a point just North of Sanford Drive; thence Southwardly along the Prince Ibraham zone line to the existing Mineral Springs zone line.



Moore - Being converted to a laboratory school. See Ardmore, Bolton, Brunson and Whitaker for portions of Moore zone added to those zones.

North Elementary - Addition of portion of Lowrance zone. Beginning at a point in the existing North Elementary zone line at the intersection of Glenn Avenue and Greenway Street; thence Northwest on Greenway to Montrose Street; thence due West along a line midway between the 1800 and 1900 blocks to the East Kimberley Park zone line; thence South along the East Kimberley Park zone line to Glenn; thence East on Glenn to the existing North Elementary zone line.

Oak Summit - (1) See Mineral Springs for portion of Oak Summit added to Mineral Springs. (2) See Old Town for portion of Oak Summit added to Old Town. (3) Addition of portion of Rural Hall zone. Beginning at a point in the existing West boundary of Oak Summit zone Northeast of the North end of Merry Dale Drive; thence along a straight line in a Southwesterly direction to the intersection of N. C. Highway 66 and N. C. Highway 8; thence turning Northwest on an arc that includes all residences fronting on Phelps Circle to the intersection of N. C. Highway 66 and Stanleyville Drive; thence along a straight line Southwardly from said intersection to the intersection of Farm Road and Mill Creek in the existing Oak Summit zone line.

Old Richmond - Addition of the Piney Grove portion of Old Town zone as a noncontiguous addition to Old Richmond zone. Beginning at the intersection of Germanton Road and Cherry Street Extension, an Eastern corner of the existing Old Town zone; thence Southwardly along the present Old Town zone line to the Speas zone line; thence Northwestwardly along the Speas zone line, the Southern Railroad, to the new Marshall Street Extension; thence Northwardly along the new Marshall Street Extension to the existing Old Town zone line; thence Southeastwardly along the existing zone line to the place of beginning.

Old Town - Addition of portion of Oak Summit zone to Old Town. Beginning at the existing junction of the Old Town, Rural Hall and Oak Summit zones; thence Southeastwardly along U. S. Highway #52 to a point 200 feet South of Oak Summit Road; thence Westwardly along a line parallel with and 200 feet Southwardly from Oak Summit Road to North Cherry Street Extension; thence Southeastwardly along Cherry Street Extension to the Germanton Road, a corner in the existing Old Town zone.

Petree - Addition of Eastern portion of Fairview zone. Beginning at the intersection of U. S. Highway #311 and the existing Petree zone line; thence Southwestwardly along U. S. 311 to the existing Southeast corner of the Fairview zone; thence westwardly along the existing South line of the Fairview zone to Attucks; thence Northwardly on Attucks to Bowen Boulevard; thence Westwardly on Bowen Boulevard to Manchester Street; thence North on Manchester Street and Manchester Street extended to a point due West of the Northwest corner of the existing Petree zone; thence East to said corner.

Rural Hall - See Oak Summit for portion of Rural Hall zone added to Oak Summit.

Sedge Garden - No change.

Sherwood Forest - (1) See Whitaker for portion of Sherwood Forest added to Whitaker. (2) Addition of portion of South Fork zone to Sherwood Forest. Beginning at the existing junction of the Vienna, Lewisville and Sherwood Forest zones; thence Southwardly along the East line of the Lewisville zone to a point 200 feet North of Lewisville Road; thence Eastwardly along a line parallel with and 200 feet Northwardly from Lewisville Road to a point 200 feet West of Peacehaven Road; thence Northeastwardly along a line 200 feet Westwardly from Peacehaven Road to the existing Sherwood Forest zone line.

Skyland - (1) See Mebane for portion of Skyland zone added to Mebane. (2) Addition of portion of Fourteenth Street zone to Skyland. Beginning at the intersection of the existing Skyland zone line and Dunleith Avenue; thence Northwardly along Dunleith to the South zone line of Fairview; thence Eastwardly along the existing South line of Fairview to U. S. Highway #311 said point being in the existing line of the Skyland zone.

South Fork - See Sherwood Forest for portion of South Fork added to Sherwood Forest.

South Park - All of the former Diggs Elementary zone except the Diggs School Building and School Site is added to and made a part of the South Park zone.

Speas - No change.

Vienna - Addition of portion of Old Town zone to Vienna. Beginning at the Southeast corner of the Old Richmond zone; thence Northwardly the Old Richmond zone to N. C. Highway 67; thence Southeastwardly along N. C. Highway 67 to Muddy Creek; thence Southwardly along Muddy Creek to the existing Vienna zone line.

Walkertown - No change.

Waughtown - Addition of portion of Union Cross zone to Waughtown. Beginning at the common corner of the existing Waughtown and Union Cross zones in the existing Sedge Garden zone line; thence Southeastwardly along the Sedge Garden zone line to a point midway between Lasley Drive and Cole Road; thence Southwardly to a point 200 feet South of Union Cross Road, said point being 200 feet West of Ridgewood Road; thence Westwardly along a line parallel with and 200 feet Southwardly from Union Cross Road; thence continuing Westwardly along a line 200 feet Southwardly from Teague Road to the Griffith zone line; thence Northwestwardly along the Griffith zone line to the existing common corner of the existing Waughtown and Easton zones.

Whitaker - Addition of portions of Sherwood Forest and Moore zones to Whitaker. Beginning at the intersection of Robinhood Road and Silas Creek Parkway, an existing corner of the Whitaker zone; thence southwardly along Silas Creek Parkway to Interstate 40; thence Southwestwardly along Interstate 40 to Old Vineyard Road, a corner in the line of the Bolton zone; thence Eastwardly along Old Vineyard Road to Stratford Road (U.S. 158); thence Northeastwardly along Stratford Road to Interstate 40, a point in the existing South line of the Whitaker zone.

Appendix B

Description of Interior Lines Dividing Certain Elementary School Zones Into Parts A and B

Brown - The interior line for this elementary school zone runs along 14th Street from the East boundary of the zone to the West boundary with Part A lying North of this line and Part B lying South of this line. For grades 1-4, Part A is paired with the Clemmons Elementary School zone and Part B is paired with the Lewisville Elementary School zone.

Cook - The interior line for this elementary school zone runs along Oak Street from the North boundary of the zone to the South boundary with Part A lying West of this line and Part B lying East of this line. For grades 1-4 Part A is paired with the Speas Elementary School zone and Part B is paired with the Vienna Elementary School zone.

Fairview - The interior line for this elementary school zone runs parallel to and South of 24th Street from the East boundary of the zone to the West boundary of the zone so that all residences fronting on both sides of 24th Street are in Part A which lies North of this line; Part B lies South of this line. For grades 1-4 Part A is paired with the Rural Hall Elementary School zone and Part B is paired with the Oak Summit Elementary School zone.

Kimberley Park - The interior line for this elementary zone runs from the South boundary of the zone Northwardly along Clark Avenue and thence along Clark Avenue extended to Collins Street and thence Northwardly along Collins Street to the North boundary of the Kimberley Park zone with Part A lying West of this line

and Part B lying East of this line. For grades 1-4 Part A is paired with the Sherwood Forest Elementary School zone and Part B is paired with the Whitaker Elementary School zone.

North - The interior line for this elementary school zone runs North on Main Street from the South boundary to Glenn Avenue; thence West on Glenn to Trade Street; thence North on Trade to the North boundary of the North Elementary School zone with Part A lying West of this line and Part B lying East of this line. For grades 1-4 Part A is paired with the Sedge Garden Elementary School zone and Part B is paired with the Bolton Elementary School zone.

Skyland - The interior line for this elementary school zone runs from the Southern boundary of this school zone from the intersection of 5th and Cameron Avenue Northwardly along Cameron Avenue and Cameron Avenue extended to the Northern boundary of this school zone with Part A lying east of this line and Part B lying west of this line. For grades 1-4 Part A is paired with the Kernersville Elementary School zone and Part B is paired with the Ardmore Elementary School zone.

South Park - Two interior lines are required for this zone since the South Park Elementary zone now has the former Diggs zone added to it. The first interior line runs along Corporation Parkway from the East boundary to the West boundary of the South Park zone with Part A lying South of this line and Part B lying North of this line up to the South line of the former Diggs zone. The second interior line runs from East to West along Mock Street to Powell Street and then along Powell Street and Powell Street extended to the West line of this school zone

with Part A lying from this line Southwardly to the South boundary of the former Diggs zone and Part B lying from this line Northwardly to the North boundary of this school zone. For grades 1-4 the two Parts A described above are paired with the Konnoak Elementary School zone and the two Parts B are paired with the Latham Elementary School zone.

Walkertown - The interior line for this zone runs along Belews Creek from the North boundary of this zone Southwardly to a point due East of the intersection of Pine Hall Road and U.S. Highway #311; thence West to said intersection; thence South along Main Street to N.C. Highway #66; thence on a straight line from said point to the intersection of Belews Creek Road and Williston Road in the South line of the Walkertown Elementary School zone with Part A lying West of this line and Part B lying East of this line. For grades 1-4 Part A is paired with the Ibraham School zone and Part B is paired with the Petree School zone.

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1971

No. 71-274

Winston-Salem/Forsyth County Board of Education,

Petitioner

v.

Catherine Scott, et al,

Respondents

****

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

****

PETITION FOR WRIT OF CERTIORARI

****

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PETITION FOR A WRIT OF CERTIORARI
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****

Petitioners pray that a Writ of Certiorari be issued to review the opinion and order of the United States Court of Appeals for the Fourth Circuit entered in this case on June 10, 1971.

OPINIONS BELOW

The decision of the United States District Court for the Middle District of North Carolina of June 25, 1970, is reported in 317 F. Supp. 453. It is set forth in the Appendix, pp. A-1 to A-85.

The opinion of the United States Court of Appeals for the Fourth Circuit has not yet been reported. It is set forth in the Appendix, pp. A-91 to A-104. The Order of the District Court of July 17, 1970, is set forth in the Appendix, pp. A-86 to A-90. The Memorandum Orders of the District Court of June 22, 1971 and July 26, 1971, on remand from the Court of Appeals are set forth in the Appendix, pp. A-105 to A-115.

JURISDICTION

The opinion-order of the United States Court of Appeals for the Fourth Circuit was rendered June 10, 1971. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

QUESTIONS PRESENTED

1. Where tne unchallenged findings of fact of the District Court support the conclusion that the petitioner is operating a school system in which no person is effectively excluded from any school because of race or color, did the Court of Appeals err in ordering the petitioner to file a new plan of desegregation?

2. Did the Court of Appeals err in so construing Swann v. Charlotte-Mecklenburg Board of Education, ___ U.S. ___, 91 S. Ct. ___, 28 L. Ed. 2d 554 (1971) as to require the achievement of racial balance in a school system in which the predicates upon which the decree in Swann was fashioned do not exist; thereby, erroneously converting the racial balance requirement found permissible under the particular facts of Swann to a requirement of substantive law?

3. If not, should not an "equitable decree", under the facts of this case, at least include a reasonable time limitation after which court ordered "grouping, pairing, transportation and other bizarre devices" to

achieve racial balance will terminate and the Board of Education will be at liberty to assign pupils on a non-discriminatory basis without regard to race or color?

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

STATEMENT

This action was filed on October 2, 1968, in the United States District Court for the Middle District of North Carolina by Negro school children and their parents who alleged the denial of equal protection of the laws arising out of the operation of the petitioner's school system.

The facts of this case are set out in the Memorandum and Order of the District Court of June 25, 1970 (A-1 et seq.) about as succinctly as they can be stated, and we respectfully invite the Court's attention to the findings of fact as set out therein. We also invite the Court's attention to the July 17, 1970 Order of the District Court. (A-86 et seq.)

After a hearing on the merits, the District Court, on June 25, 1970, entered the Memorandum and Order above referred to (A-1 to A-85) making extensive findings of fact and concluding that the petitioner was operating its school system in compliance with constitutional requirements except insofar as it had not changed the racial composition of three schools and insofar as it allowed freedom of transfer for any students on a nondiscriminatory basis, after majority to minority transfers have been given priority. The plaintiffs gave notice of appeal from the Order of the District Court and the petitioner also gave notice of appeal from the Order directing it to file a plan for the reasonable integration of the three schools designated in the Order. Pending the appeals, the petitioner paired and clustered the three schools with five others in compliance with the orders of the court.

After this Court's opinion on Swann v. Charlotte-Mecklenburg Board of Education, ____ U.S. ____, 91 S. Ct. ____, 28 L.Ed.2d 554 (1971), and Davis v. Board of Commissioners of Mobile, ____ U.S. ____, 91 S. Ct. ____, 28 L.Ed.2d 577 (1971), the Court of Appeals accelerated the briefing schedule in the case and heard oral arguments on June 7, 1971. The Court of Appeals issued its Order and Mandate on June 10, 1971.

REASONS FOR GRANTING THE WRIT

I. The Decisions of This Court Were Mechanically and Wrongly Applied by the Court of Appeals.

The conclusion of the District Court that the Board of Education was, in effect, operating a unitary system was amply supported by facts.

On appeal to the Court of Appeals the plaintiffs stated the facts quite differently than had been found by the District Court, but they did not challenge a single finding of the District Court as not being supported by the evidence; yet the facts as found by the District Court were ignored by the Court of Appeals in its Order and Mandate.

This Court held in Swann v. Charlotte-Mecklenburg Board of Education, supra, that based upon the findings of facts of the District Court, that Court had not abused its discretion in ordering the implementation of the Finger Plan as a means of desegregating the schools in the Charlotte-Mecklenburg system. This Court made it clear, however, as had the District Court, that its decision was based upon the facts of that case and that the remedy fashioned by

the District Court was appropriate in the light of those facts and was not necessarily required under different circumstances. The entire foundation for the District Court's order in that case, as clearly pointed out by this Court, was:

> "First, its express finding, approved by the Court of Appeals and not challenged here, that a dual school system had been maintained by the school authorities at least until 1969; second, its finding, also approved by the Court of Appeals, that the school board had totally defaulted in its acknowledged duty to come forward with an acceptable plan of its own, notwithstanding the patient efforts of the District Judge who, on at least three occasions, urged the Board to submit plans." Swann v. Charlotte-Mecklenburg Board of Education, 28 L.Ed.2d at 571.

Here the findings of fact are almost directly opposite. In the first place, it has never been admitted, and the District Court did not find, that the local board had not gone through the transition from the operation of a dual school system to a unitary system. In fact, the express finding

was that the Petitioner was operating a system in which no person was effectively excluded from any school because of race or color and such racial imbalance in the schools as existed was the adventitious result of residential housing patterns:

> "The Board strenuously contends that there has been no gerrymandering of the zone boundaries, and that the attendance zones are drawn based on nonracial criteria except where efforts were made to increase integration. On the other hand, the plaintiffs contend that the attendance zones are drawn to foster racial segregation. The Court finds no evidence to support the contention of the plaintiffs. Instead, it appears that the boundaries of the zones are drawn so that the pupils attend the school nearest their residence, recognizing natural boundaries, barriers and obstacles that might endanger the children, such as heavily traveled streets. Nevertheless, as will be later pointed out, there are two areas in the school system which the Court concludes will not meet the 'reasonableness test' established in Swann, et al v. Charlotte-Mecklenburg Board of Education, et al, supra." District Court Memorandum and Order of June 10, 1971 (A-60).

"The reasonable conclusion to be drawn from the evidence is that even though in times there has been some discrimination in the sale and rental of property, the concentration of the Negro population in the northeastern quadrant of the City has been caused by economic factors and the desire of blacks to live in areas where they do live rather than in white or predominantly white areas. This conclusion is confirmed by the fact that in resettling displaced blacks as a result of public housing projects, that without exception the blacks asked to be resettled in the same area where they lived, that is, in black or predominantly black areas, even though other areas were open. The concentration of blacks cannot be fairly attributed to public and private discrimination, and it is concluded that the housing patterns are not the result of such discrimination. In any event, where de jure segregation has been eliminated and de facto segregation remains, there surely must come a time when the stigma of de jure segregation is removed, certainly so in this situation, particularly in those areas once populated by whites and now all black or predominantly black." (A-62, 63).

The Court then concluded:

> "The area attendance zones of each school in the Winston-Salem/Forsyth County School Administrative Unit have been drawn without discrimination as to race or color and with due regard to all circumstances existing in each school area. Nevertheless, all reasonable means as required by Swann v. Charlotte-Mecklenburg Board of Education, supra, have not been utilized to change the racial composition at Diggs Elementary, Kimberly Park Elementary and Cook Elementary (Carver Crest)." (A-65, 66)

and

> "Except in the area of pupil composition, the Board's plan effects a unitary system." (A-67).

Even though the hearing and decision of the District Court antedated the decision of this Court in Swann, the District Court had closely scrutinized the facts relating to schools of one-race or virtually of one-race and had determined that the racial composition of those schools did not result from present or past discriminatory action. The District Court also had before it, considered, and rejected the "Larsen" Plan

submitted by the plaintiffs, which would have achieved a racial balance in each school in the system because

> "the undue burden which would result from the implementation of the Larsen Plan, not only upon the School Board, but vastly more important, upon the students, both black and white, within this system, far outweighs any benefits which might be derived therefrom." (A-31). (Emphasis added).

Finally, in contrast to Swann, the District Court found that the school board in this case had constantly cooperated with HEW authorities; had taken affirmative action that had resulted in significant amounts of racial integration in the various schools; had instituted on its own without an order of court a plan for the transfer of approximately 425 classroom teachers so that the ratio of black to white teachers in each school in the system was approximately at the ratio in the system as a whole; had never failed to submit whatever plans were required by the Court and had never failed to submit a plan that satisfied the requirements of the District Court and had exhibited a good faith effort to comport with the requirements of the Constitution. The District

Court in Swann had made it clear that "the orders of this Court have been confined to the only area they can properly embrace, and that is the rights of the particular parties represented in this case, on the particular facts and history of this case." Swann v. Charlotte-Mecklenburg Board of Education, 318 F.Supp. 787, 793 (M.D.N.C. 1970), affirmed ____U.S.____, 91 S. Ct. ____, 28 L.Ed.2d 554 (1971). (Emphasis in original). And so were the orders of the District Court in this case confined.

Despite these differences between the case at bar and Swann and despite the findings of fact of the District Court, the Court of Appeals in a per curiam decision ignored these findings and distinctions and ordered the school board to come forward with a new plan of desegregation "because the [District Judge] did not have the benefit of the Supreme Court mandate that adequate consideration be given 'to the possible use of bus transportation and split zoning.'" (A-99). The Court of Appeals required the petitioner to "submit a new plan to comply with Swann and Davis on or before July 1, 1971." (A-100).

The Court further provided that (A) "if the District Court approves a plan achieving less actual desegregation than would be achieved under an alternate proposed plan, it shall find facts that are thought to make impracticable the achieving

of a greater degree of integration especially if there remain any schools all or predominantly all of one race;" (A-101, 102) and (B) "in Winston-Salem/Forsyth County the school board may fashion its plan on the Larson (sic) plan with necessary modifications and refinements or adopt a plan of its choice which will meet the requirement of Swann and Davis." (A-103). (Dr. Finger, whose plan was adopted by the Court in the Swann case and Dr. Larsen, who proposed a plan in this case, are both members of the faculty of Rhode Island College, and Dr. Finger's plan for Charlotte-Mecklenburg is essentially the same as Dr. Larsen's plan for Winston-Salem/Forsyth County). The statements of the Court of Appeals, coupled with the fact that the massive bussing, groupings, pairings and other devices involved in the Finger plan were apparently found to be "practicable" by the Supreme Court, put the Winston-Salem/Forsyth County Board of Education in a position where it had no alternative but to achieve a racial balance throughout the school system in order to comply with the mandate of the Court of Appeals. The inevitability of this result is made clear by the June 22, 1971, Memorandum Order of the District Judge in this case, a copy of which is attached to this petition, (A-105, et seq) in which the District Court stated:

"Despite the substantial difference between the findings of this Court, which formed the predicate for this Court's June 25, 1970, opinion in this case, and the findings which formed the predicate of the decision of the District Court in Swann, it is apparent that it is as 'practicable' to desegregate all the public schools in the Winston-Salem/Forsyth County system as in the Charlotte-Mecklenburg system and that the appellate Courts will accept no less. Consequently, this Court can approve no less. The costs of otherwise unnecessary additional transportation, the time consuming burden and inconvenience imposed on pupils to achieve this result, and the problems imposed upon the school board and its staff should be no greater or more burdensome in the Winston-Salem/Forsyth County system than in the Charlotte-Mecklenburg system." (A-107, 108).

and also the Memorandum Order of the District Court of July 26, 1971 (A-110, et seq) in which the Court said:

"This Court in its Memorandum and Order of June 25, 1970, and its Order

of August 17, 1970, set out its findings and conclusions with respect to pupil assignment in the Winston-Salem/Forsyth County School System, and the Larsen Plan proposed by the plaintiffs and discussed the burdens and impracticalities which would necessarily attend the implementation of such a Plan. Notwithstanding said findings and conclusions, this Court must comply with the June 10, 1971, mandate of the Court of Appeals under which this case, on appeal, was remanded to this Court and must accordingly direct the Board of Education to proceed with the implementation of the 'Revised Pupil Assignment Plan for the 1971-72 School Year' hereinabove referred to." (A-114).

One of the principal lessons of the Swann decision is that local situations differ and that local school boards and District Judges should be deferred to in dealing with these situations. Yet, the Court of Appeals ignored the distinction between this case and the Swann decision and issued an order that failed to take into account the discretionary power of the District Judge. Under the order of the Court of Appeals, the District Judge could give no weight to his own unchallenged findings of fact and was strictly limited to

the rigid guidelines set out by the Court of Appeals in its opinion. This is in contrast to the Swann decision where this Court pointed out that local Courts were to have a "practical flexibility" in shaping remedies and that "the nature of the violation [would determine] the scope of the remedy." Swann, supra, 28 L.Ed.2d 567. See also Northcross v. Board of Education of Memphis, 397 U.S. 232 (1970), where this Court held that there was substantial evidence to support the finding of the District Court that a desegregation plan was inadequate and that the Court of Appeals had erred in substituting its own finding that the board was not operating a dual school system.

Although the Swann and Davis decisions had not come down at the time of the District Court's Order of June 25, 1970, it did consider the techniques held to be permissible to desegregate schools in those cases and, in its discretion, accepted and ordered the implementation of these techniques in some schools of the system, and rejected them in others. At the hearing on the merits prior to that decree, the District Court had before it the Larsen Plan which would have achieved a ratio of 22% to 43% black in each school in the system. The Court

examined that plan and assessed the practicalities of it, including the burdens and inconveniences it would place on the students affected, especially elementary students, and rejected it. If the emphasis of this Court in Swann upon the discretion of the District Court as a court of equity, is to have any meaning, the findings and decisions of the District Court in this case should have been upheld by the Court of Appeals; there is no basis for distinguishing between those cases in which the District Court has used it's discretion to fashion a decree achieving something short of a mathematical ratio in each school in the system and those in which it has exercised its discretion to achieve such a ratio, as the District Court did in Swann.

II. There Is a Conflict Between Circuits that Should be Resolved.

When the Court of Appeals for the Fourth Circuit in its Order and Mandate required that "if the District Court approves the plan achieving less actual desegregation than would be achieved under an alternate proposed plan, it shall find facts that are thought to make impracticable the achieving of a greater degree of integration especially if there remain any schools all or predominantly all of one race," (A-101, 102) and provided that the Larsen Plan

could be used, it removed all discretion from the District Court. Obviously, in any school district smaller than Charlotte-Mecklenburg, which like Charlotte-Mecklenburg is a county system in which a relatively large city is located that in turn contains a predominantly black residential area, it cannot be "impracticable" to racially balance each school in the system when it was not "impracticable" to do so in Charlotte-Mecklenburg.

The approach of the Court of Appeals in this case should be contrasted with that of the Court of Appeals for the Sixth Circuit in the case of Goss v. Board of Education of the City of Knoxville, No. 20834 (6th Cir., June 22, 1971). The Court remanded the case to the District Court for further proceedings consistent with Swann and the other opinions announced on April 20, 1971, but specifically declined to direct the achievement of any particular degree of desegregation or to accede to the plaintiff's request for a time table, and the authorization of an appointment of an education expert who would be paid by the school board. In doing so the Court took this view of the Swann decision,

> "We are not advised from what material plaintiffs constructed the elaborate rules and directions set out. It is apparent, however, that they are, in

substance, the commands of District Judge James B. McMillan, set out in his opinions in Swann v. Charlotte-Mecklenburg Board of Education, 306 F.Supp. 1299 (W.D.N.C. 1969) 311 F. Supp. 265 (1970), with some extensions and elaborations. The opinions of Judge McMillan, 306 F.Supp. 1299, 311 F.Supp. 265, and 318 F.Supp. 786, affirmed by the Supreme Court in Swann v. Charlotte-Mecklenburg Board of Education, _____U.S._____ (1971), express with some asperity his pique that the school authorities had failed to fully adopt a plan constructed by an expert, Dr. John Finger, who had been appointed by the District Judge. The District Court opinions reflect in observable measure Judge McMillan's doubts as to the genuineness of the school authorities' concern for the constitutional rights of both the black and white school children of Charlotte and Mecklenburg counties. The broadness of their commands bespeak some motivation of reprisal. In the long history of the litigation we deal with, we find no such bitter contesting between the school authorities of Knoxville and the Court, nor between the plaintiffs and the school authorities. We, therefore, initially observe that while the Supreme Court found legally

tolerable what may be referred to as the Mecklenburg rule, it by no means directed its commands be obeyed everywhere. We, therefore, conclude that there is nothing in Swann (1971) that requires us to announce a fiat imposing on Knoxville the identical pattern fashioned by Judge McMillan for his case." Goss, supra, Slip Opinion p. 6.

As made amply clear in the findings of fact of the District Court in its Memorandum and Order of June 25, 1970, this case, like the Goss case, does not contain the same elements of reluctance on the part of the school board to comply with the Orders of Court. Judge McMillan's Order requiring the implementation of the Finger Plan came only after no satisfactory plan was submitted by the school board. This Court recognized the importance of the context in which the Finger Plan was put into effect and found that in those circumstances it was within the discretion of the District Court. The Court of Appeals for the Fourth Circuit, on the other hand, ignored that context and treated the Mecklenburg rule as one of substantive law.

The findings of fact of the District Court in the instant case are similar to the findings in the typical case brought to eradicate de facto segregation such as Bell v. School City of Gary, Indianna, 324 F.2d 209 (7th Cir. 1963), cert. denied 377 U.S. 924, and Deal v. Cincinnati Board of Education, 369 F.2d 55 (6th Cir. 1966), cert. denied 389 U.S. 847, and Deal v. Cincinnati Board of Education, 419 F.2d 1387 (6th Cir. 1969), cert. denied because of late filing. In effect the school board in the case at bar overcame the presumption arising from the existence of a former dual school system and proved that the racial makeup of the various schools was due to factors other than state imposed segregation. The District Court so found. Assuming that the findings of the District Court are not clearly erroneous, and the Court of Appeals did not find that they were, there should be no difference between this case and one arising in a state in which there was no state imposed segregation in 1954, for, as the Court stated in Swann:

> "One vehicle can carry only a limited amount of baggage. It would not serve the important objective of Brown I to seek to use school desegregation cases for purposes beyond their scope although desegregation of schools will ultimately

have impact on other forms of discrimination. We do not reach in this case the question of whether in showing that school segregation is a consequence of other types of state action, without any discriminatory action by the school authorities, is a constitutional violation requiring remedial action by a school desegregation decree. This case does not present that question and we therefore do not decide it." Swann, 28 L.Ed.2d at 570.

It is respectfully submitted that this Court should resolve this conflict between the Fourth and Sixth Circuits as to the meaning of Swann.

III. The Swann Decision has Raised Questions of Interpretation that Should be Answered.

Not only does the Petitioner contend that the decision of the Court of Appeals goes beyond constitutional requirements, and beyond the decisions of this Court in Swann and Davis, but implementation of a deliberate, racial pupil assignment plan under the mandate of the Court of Appeals creates an artificial, Court imposed scheme from which there appears to be no way for

the board to extricate itself in the future. In Swann the Court points to a light at the end of the tunnel with the following:

> "At some point, these school authorities and others like them should have achieved full compliance with this Court's decision in Brown I. The systems will then be 'unitary' in the sense required for our decisions in Green and Alexander.
>
> "It does not follow that the community served by such systems will remain demographically stable, for in a growing, mobile society, few will do so. Neither school authorities nor district courts are constitutionally required to make year-by-year adjustments of the racial composition of student bodies once the affirmative duty to desegregate has been accomplished and racial discrimination through official action has been eliminated from the system. This does not mean that federal courts are without power to deal with future problems; but in the absence of a showing that either the school authorities or some other agency of the State has deliberately attempted to fix or alter demographic patterns to affect the racial composition of the schools, further intervention by a District Court should not be necessary. (Emphasis added) Swann, supra, 28 L.Ed.2d at 573.

The clear implication of the foregoing statements is that "once the affirmative duty to desegregate has been accomplished and racial discrimination through official action is eliminated from the system," the school systems of the South are to be treated the same as those outside of the South which have never had dual school systems and which, according to our understanding of Swann, are not in violation of the constitution so long as such segregation as may exist is not in any way attributable to past or present State action.

The achievement of this status appears necessarily to carry with it the right of a school board, once its school system is in full compliance, to make assignments thereafter on a non-discriminatory basis, without regard to race or color, and no longer to be required to adhere to bizarre racial pupil assignment plans in order to have a "unitary" school system. The practical difficulty is that once a Court orders the kind of artificial pupil assignment plan imposed on the Charlotte-Mecklenburg system and now being imposed on the Winston-Salem/Forsyth County system, there is no way to get away from such a plan and to revert to a normal, non-discriminatory pupil assignment plan similar to those existing elsewhere in the United States, unless the Court includes

in the Order a reasonable time when the Order will terminate, in the event it is not earlier terminated or extended by court order or general law. This Court has said that decrees such as the one rendered in Swann are "equitable decrees" to right a former wrong. If this be true and if "at some point the school authorities and others like them should have achieved full compliance" with Brown, then it would seem to be both appropriate and necessary for the Court to specify a reasonable time limit in these cases as is frequently found in antitrust and civil rights cases and certain other equitable decrees. What "equity" or constitutional requirement can possibly justify punishing the people of the South, both black and white, by saddling them with such costly, burdensome, racially motivated pupil assignment schemes, once all "vestiges" of a formal dual school system have been eliminated?

To comply with the orders of the Court of Appeals and District Court the Winston-Salem/Forsyth County Board of Education has filed a plan (A-116 et seq.), which the District Court by Memorandum Order of July 26, 1971, ordered the board of education to implement for the 1971-72 school year. In submitting this plan, the Board asked that it not be required to implement the plan

and alluded to some of the many reasons why it deemed impracticable the assignment of pupils to achieve a racial balance in this school system. Nothing can be more obvious than that the District Court, far from "fashioning an equitable decree," felt that it had no alternative but to order the implementation of a plan that neither the District Court would have required nor the board of education would have submitted had either had the discretion not to do so. This plan is appended to this petition: (1) to show the continuing good faith effort of this Board of Education to comply with the orders of the Courts; (2) to emphasize the importance of having prompt consideration given to this petition; and (3) to show in a more tangible way how many thousands of pupils must be subjected to the burden and inconveniences of otherwise unnecessary transportation, just to achieve a racial balance.

All racial assignments just to achieve racial balance in the schools necessitate earlier rising, later returning from school, fewer hours for study and play, fewer opportunities for participation in athletics and other "after school" extra curricular activities, greater transportation hazards, greater cost of school operations, greater

difficulty for parents to attend P.T.A. meetings, and numerous other burdens and inconveniences for everyone involved, both black and white. We submit that it is no answer to say that X percent would have to travel X miles to school anyway, so why should not that many more students be required to do so. Surely there is nothing in the Equal Protection Clause of the Constitution which can fairly be construed as requiring that all children shall travel five, ten or fifteen miles to school just because some children have to travel five, ten or fifteen miles to school. This burden is being imposed on this system and its pupils and parents solely because of their race. This, we submit, is the antithesis of what this Court intended in Brown v. Board of Education, 347 U.S. 483 (1954) and Alexander v. Holmes County Board of Education, 396 U.S. 19 (1969).

Respectfully submitted,

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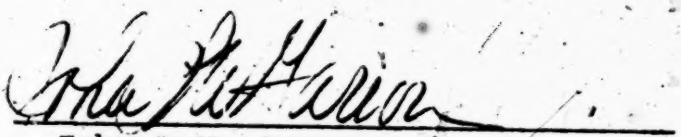

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1971

No. 71-274

WINSTON-SALEM/FORSYTH COUNTY
BOARD OF EDUCATION,

Petitioner

v.

CATHERINE SCOTT, et al.,

Respondents

****

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

****

SUPPLEMENTAL STATEMENT OF PETITIONER

****

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****

SUPPLEMENTAL STATEMENT OF PETITIONER

****

The Petitioner filed a petition for writ of certiorari on August 23, 1971. At the same time, an application to stay the Order of the Court of Appeals for the Fourth Circuit pending disposition of the Board's petition for writ of certiorari was filed with the Chief Justice as Circuit Justice for the Fourth Circuit. The application

for stay was denied on August 31, 1971, in an opinion filed by the Chief Justice. In that opinion, the Chief Justice suggested that the Orders entered by the District Court on June 22 and July 26, 1971, pursuant to the decision of the Court of Appeals on June 10, 1971 (the decision sought to be reviewed by certiorari) may have misinterpreted this Court's decision in Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971) and related cases.

In the light of the statements of the Chief Justice in his opinion denying the stay, the Petitioner thought it appropriate to request that the District Court reconsider and vacate its Orders of June 22 and July 26, 1971, on the grounds that these Orders went too far in requiring the Petitioner to implement the plan under which it is now operating. Accordingly, the Petitioner filed a motion in the District Court on September 9, 1971, a copy of which is attached to this Supplemental Statement and incorporated herein by reference. This motion has not yet been acted upon.

The purpose of this Supplemental Statement is to inform the Court of this pending motion in the District Court. The Petitioner

will inform the Court of the disposition of the motion by the District Court.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

WINSTON-SALEM DIVISION

CATHERINE SCOTT, et al.,	)	
	)	
Plaintiffs	)	
	)	
v.	)	No. C-174-WS-68
	)	
WINSTON-SALEM/FORSYTH COUNTY BOARD OF EDUCATION, et al.,	)	
	)	
Defendants	)	

MOTION

Defendant, Winston-Salem/Forsyth County Board of Education, respectfully moves that the Court reconsider and vacate its order of July 26, 1971, requiring "that the Winston-Salem/Forsyth County Board of Education proceed immediately to implement the 'Revised Pupil Assignment Plan for the 1971-72 School Year,' which was submitted to the Court

June 29, 1971, pursuant to the June 10, 1971, mandate of the Court of Appeals for the Fourth Circuit and the June 22, 1971, Order of this Court, and that said plan be put into effect as of the opening of the 1971-72 school year," and also this Court's Order of June 22, 1971, pursuant to which said plan was submitted, on the following grounds:

(1) On August 31, 1971, the Honorable Warren E. Burger, Chief Justice of the United States and Circuit Justice for the Fourth Circuit delivered an opinion denying a stay of the decision of the United States Court of Appeals for the Fourth Circuit dated June 10, 1971, and subsequent orders of this Court entered pursuant thereto, pending disposition of the Board's Petition for Writ of Certiorari to review the decision of the Court of Appeals. However, in that opinion, the Chief Justice made certain statements that suggest that the Winston-Salem/Forsyth County Board of Education, this Court, and perhaps the Court of Appeals, have misconstrued Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971) and related cases. Specifically, the Chief Justice stated:

> "The Board's resolution reciting that it was adopting the revised plan under protest, on an understanding

that it was required to achieve a fixed 'racial balance' that reflected the total composition of the school district is disturbing. It suggests the possibility that there may be some misreading of the opinion of the Court in the Swann case. If the Court of Appeals or the District Court read this Court's opinions as requiring a fixed racial balance or quota, they would appear to have overlooked specific language of the opinion in the Swann case to the contrary. Rather than trying to interpret or characterize a holding of the Court, a function of the Court itself, I set forth verbatim the issues seen by the Court in Swann the essence of the Court's disposition of those issues:

> 'The central issue in this case is that of student assignments, and there are essentially four problem areas:
>
> (1) to what extent racial balance or racial quotas may be used as an implement in a remedial order to correct a previously segregated system;

(2) whether every all-Negro and all-white school must be eliminated as an indispensable part of a remedial process of desegregation;

(3) what the limits are, if any, on the rearrangement of school districts and attendance zones as a remedial measure; and

(4) what the limits are, if any, on the use of transportation facilities to correct state-enforced racial school segregation.' 402 U.S. at 22.

"After discussing the problem, the opinion concluded:

'If we were to read the holding of the District Court to require as a matter of substantive constitutional right, any particular degree of racial balance or mixing, that approach would be disapproved and we would be obliged to reverse. The constitutional command to desegregate schools does not mean that every school in every community must always reflect the racial composition of the school system as a whole.' 402 U.S. at 24. (Emphasis Added.)

"Nothing could be plainer, or so I have thought, than Swann's disapproval of the 71%-29% racial composition found in the Swann case as the controlling factor in assignment of pupils, simply because that was the racial composition of the whole school system. Elsewhere in the Swann opinion, we had noted the necessity for a District Court to determine what in fact was the racial balance as an obvious and necessary starting point to decide whether in fact any violation existed; we concluded, however, that 'the very limited use made of mathematical ratios was within the equitable remedial discretion of the District Court.'

* * * * *

"This case is further complicated by what seems to me some confusion respecting the standards employed and the findings made by the District Court and the terms of the remand order of the Court of Appeals. Under Swann and related cases of April 20, 1971, as in earlier cases, judicial power can be invoked only on a showing of discrimination violative of the constitutional standards declared in Brown v. Board of Education, 347 U.S. 483 (1954). In findings dated June 25, 1970, the District Court sent the

case back to the School Board for changes to eliminate the dual school system; it approved the plan submitted subject to several modifications. The modified plan was before the Court of Appeals when this Court decided the Swann case. The Court of Appeals in its remand following the decision in Swann did not reverse the District Court's findings, but rather directed reconsideration in light of Swann. In the circumstances that was an appropriate step. The present status of the findings is not clear to me, but the District Court on reconsideration following the remand seems to have thought that it was compelled to achieve a fixed racial balance reflecting the composition of the total county system. The explicit language of the Court's opinion in Swann suggests a possible confusion on this point. I do not attempt to construe that language, but simply recite it verbatim: 'The constitutional command to desegregate schools does not mean that every school in every community must always reflect the racial composition of the school system as a whole.' 402 U.S. at 24."

In a footnote, the Chief Justice went on to say:

"By way of illustration, if the record showed--to take an extreme example of a patent violation of Swann--that the average time was three hours daily or that some were compelled to travel three hours daily where school facilities were available at a lesser distance, I would not hesitate to stay such an order forthwith until the court could act at least as to the students so imposed on. The burdens and hardships of travel do not relate to race; excessive travel is as much a hardship on one race as another. The feasibility of a transfer program to give relief from such a patently offensive transportation order as the one hypothesized would also be relevant."

The Chief Justice wrote the opinions in Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971), and Davis v. Board of School Commissioners of Mobile County, 402 U.S. 33 (1971). Having done so, he is in the best position of anyone to interpret the holdings of these cases. It appears clear from his opinion denying the application for a stay in this case that he does not believe that the Board of Education was required to achieve the results decreed by this Court's orders of June 22 and July 26, 1971. It would, therefore, be appropriate for this Court to reconsider and to vacate

its orders and to permit the Board to return to a plan of pupil assignment that does not impose the hardships and burdens of the Larsen Plan found by this Court not to be constitutionally required in its June 25, 1970, order, which as pointed out by the Chief Justice, was not reversed by the Court of Appeals.

(2) The implementation of the "Revised Pupil Assignment Plan for the 1971-72 School Year" has demonstrated its impracticality and has revealed hardships and burdens on the students of the system that should be alleviated. Some of these hardships are enumerated as follows:

(a) Thousands of elementary students, including six and seven year old students, are forced to travel great distances going to and from school, even though they live quite close to a school which they attended prior to the imposition of the present pupil assignment plan. In his opinion, the Chief Justice pointed out that if "some students were compelled to travel three hours daily where school facilities were available at a lesser distance, I would not hesitate to stay such an order forthwith until the Court could act at least as to the students so imposed on." The

Chief Justice refers to this as "an extreme example of a patent violation of Swann"; there is every indication from the opinion that he would not require that the maximum time be three hours before affording relief, but that some lesser time of travel would also be considered an undue hardship where school facilities are available at a lesser distance.

(b) In order to implement the plan, it has been necessary to make extensive use of Interstate 40 and the North-South Expressway, the two major traffic arteries through the county, as a means of transporting students back and forth. The morning runs of the buses correspond with the rush-hour traffic. The governors of school buses are set at 35 miles per hour, the maximum lawful speed for school buses under state law (G. S. 20-218). The top speed of a loaded school bus going up even a slight incline is less than that, and with the rolling, hilly terrain existing in this County, the uphill speed of a loaded school bus is often as slow as 20 miles per hour. The speed limit on Interstate 40 and the North-South Expressway outside of

the city is 65 miles per hour. It is not unusual for cars and trucks to exceed even those speed limits. Travelling at only about one-half, or less, the speed of most vehicles on these highways, and ten miles per hour or more below the posted minimum speed of 45 miles per hour on Interstate 40, each bus using the expressways incurs a great risk of a tragic accident. Further, the congestion caused by the school buses during the morning rush hour on all streets and highways, but especially Interstate 40, which is the most heavily travelled highway in the State, greatly increases the risk of an accident and impedes the normal movement of traffic. School buses make more than one hundred trips on Interstate 40 each day.

(c) The school system lacks sufficient buses to operate an effective transportation system even on the basis of staggered opening times. There are serious problems of overcrowding on many buses; many students are forced to stand in the aisles. Some buses are forced to travel inordinately long routes; schedules have had to be staggered more than they otherwise would have and

students are forced to leave home earlier and arrive in the afternoon later because of the absence of sufficient transportation. If the school system had a sufficient number of buses, it would increase the number of bus trips made on busy highways and add to the rush-hour traffic congestion.

(d) The additional travel time which has been imposed upon thousands of pupils, particularly at the elementary level, who might otherwise attend a school near their places of residence deprives these pupils of approximately one hour each school morning and another hour each school afternoon--time for sleep, study, recreation or other activities of which they should not be deprived. Under Chief Justice Burger's opinion of August 31, 1971, it appears that the Supreme Court did not intend for Swann to be so interpreted as to require such a harsh result.

The citizens of Forsyth County have patiently borne what they were convinced to be an unjust but unavoidable plan of pupil assignment for their schools. They, the Board of Education, and this Court believed the plan unavoidable because of the Swann decision, as interpreted by the Court of Appeals.

They have now learned that the author of that opinion which has caused so much personal hardship believes that it has been misinterpreted. The results of that interpretation have been unfortunate; how much more unfortunate to continue on a course that, as it now develops, was not intended by the author of the opinion.

WHEREFORE, the Winston-Salem/Forsyth County Board of Education respectfully moves that the Court reconsider and vacate its Orders of June 22, 1971, and July 26, 1971; and that Winston-Salem/Forsyth County Board of Education not be required to operate its school system under the "Revised Pupil Assignment Plan for the 1971-72 School Year" as directed in said July 26, 1971, Order.

It is requested that this Motion be set for oral argument at the earliest practicable date and that movant be permitted to offer evidence at the hearing in support of this Motion.

Respectfully submitted,

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/s/ John L.W. Garrou
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CERTIFICATE OF SERVICE

This is to certify that service of the foregoing Motion was made upon all parties by mailing copies thereof in the United States Mail at Winston-Salem, North Carolina, on the 9th day of September, 1971, postage prepaid, in envelopes addressed to: Mr. Julius LeVonne Chambers, Chambers, Stein, Ferguson & Lanning, 237 West Trade Street, Charlotte, North Carolina, Attorney for the Plaintiffs; Mr. Ralph Moody, Deputy Attorney General, P. O. Box 629, Legislative Building, Raleigh, North Carolina, Attorney for the North Carolina State Board of Education and Dr. A. Craig Phillips, Superintendent of Public Instruction of the State of North Carolina; Mr. P. Eugene Price, Jr., Government Center, Winston-Salem, North Carolina, Attorney for the Board of County Commissioners of Forsyth County, North Carolina, which are the last addresses of said attorneys known to me.

/s/ W. F. Womble

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SUPREME COURT, U. S.
Supreme Court, U.S.
FILED
SEP 20 1971
E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-274

WINSTON-SALEM/FORSYTH COUNTY BOARD OF EDUCATION,

Petitioner,

v.

CATHERINE SCOTT, *et al.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF IN OPPOSITION TO CERTIORARI

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IN THE

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF IN OPPOSITION TO CERTIORARI

Statement

This school desegregation case was filed October 2, 1968. The opinion of the district court shows that at the time of trial in 1970 eighty-three percent (83%) of the black students in the system (11,539 of the total Negro student population of 13,879) were attending 19 all-black or virtually all-black schools (A-7 to A-11).[1] In this group, 8,565 Negroes attended 15 schools which were 100% black, and the rest were in two schools more than 99% black, one 98% black school and one 97% black school (A-7 to A-11). The district court opinion traces the history of school segregation in the community. No Negro child was admitted to a

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[1] The appendix to the petition for certiorari is cited herein as "A- ".

white school until 1957, or three years after *Brown* v. *Board of Education*, 347 U.S. 483, when a single Negro child was admitted to a white school in the district. Only a handful of Negroes were allowed such transfers in the ensuing several years; the number changed from 4 pupils in 1958 to 44 pupils in 1962, the sixth year of limited "integration" of the system (A-13). Separate overlapping attendance zones and bus routes based on race were maintained until the district was forced to abandon them to maintain its eligibility for federal financial aid under the Civil Rights Act of 1964 (A-14). In 1966-67, the district established a geographic attendance zone plan with a free transfer provision (A-15).

Plaintiffs sued contending that the free transfer plan was inadequate to bring about desegregation of the system. Cf. *Green* v. *County School Board*, 391 U.S. 430; *Monroe* v. *Board of Commissioners*, 391 U.S. 450. The school board, at trial, presented a proposal which would have increased the number of Negroes not in all-black schools from about 2,340 in 1969-70 to about 3,737 in 1970-71 (A-36 to A-38). The district court held that the board's desegregation proposal was insufficient, stating in its conclusions of law:

> 3. Upon proper compliance with the direction of the Court herein with reference to Diggs Elementary, Kimberly Park Elementary, Cook Elementary (Carver Crest), no person will be excluded from any school because of race or color.
>
> 4. The plan of the Board for the operation of the three schools mentioned in Paragraph 3 first above does not comply with recently enunciated constitutional principles in this Circuit, and the racial composition in these schools must be changed.
>
> 5. Except in the area of pupil composition, the Board's plan effects a unitary system.

The district court ordered additional steps to desegregate the three all-black elementary schools mentioned, an order which had the anticipated effect of increasing the number of Negroes not in all-Negro schools to about 5,175[2] or nearly double the number in such schools at the time of trial. Both sides appealed to the Fourth Circuit, with the board arguing that the added integration ordered by the district court was improper and burdensome and the plaintiffs arguing that the district court erred by permitting the board to continue to maintain more than 8,000 black pupils in twelve all-black schools. During the 1970-71 school year the district court's plan remained in effect and the court of appeals postponed argument until after this Court's decisions in the Charlotte and Mobile cases. *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1; *Davis* v. *Board of School Commissioners of Mobile County*, 402 U.S. 33.

The case was briefed and argued in the court below following this Court's *Swann* and *Davis* decisions, *supra*. A per curiam decision of the Fourth Circuit, sitting en banc, was issued covering Winston-Salem/Forsyth County and three other school systems. The Fourth Circuit, on June 10, 1971, remanded the cases "to the respective district courts with instructions to receive from the respective school boards new plans which will give effect to *Swann* and *Davis*" (A-99). The Court held:

> It is now clear, we think, that in school systems that have previously been operated separately as to the races by reason of state action, "the district judge or school authorities should make every effort to achieve the greatest possible degree of actual desegregation,

[2] The number of additional black pupils desegregated by the integration of these three all-black schools is obtained from the board's projections. See record in the Fourth Circuit, pp. 246-254.

taking into account the practicalities of the situation." *Davis, supra* at ——. We remand these cases because the respective district judges did not have the benefit of the Supreme Court mandate that adequate consideration be given "to the possible use of bus transportation and split zoning." *Davis, supra* at ——. Wherever schools are "all or predominantly of one race in a district of mixed population [there will be required] close scrutiny to determine that school assignments are not part of state-enforced segregation." *Swann, supra* at ——. Although the existence of "some small number of one-race, or virtually one-race, schools within a district is not in and of itself the mark of a system which still practices segregation by law," *Swann, supra* at ——, both the school authority and the district judge must nevertheless be concerned with the elimination of one-race schools. (A-99 to A-100)

* * *

The school authorities and the district court should consider the use of all techniques for desegregation, including pairing or grouping of schools, noncontiguous attendance zones, restructuring of grade levels, and the transportation of pupils.

If the district court approves a plan achieving less actual desegregation than would be achieved under an alternative proposed plan it shall find facts that are thought to make impracticable the achieving of a greater degree of integration, especially if there remain any schools all or predominately of one race. (A-101 to A-102)

* * *

In *Winston-Salem/Forsyth County*, the school board may fashion its plan on the Larsen plan with necessary

modifications and refinements or adopt a plan of its choice which will meet the requirements of *Swann* and *Davis*. (A-103)

Judge Bryan wrote a special concurring opinion emphasizing his understanding that the district court was not compelled to adopt the "Larsen Plan" advocated by plaintiffs, and that the district court had the "true" alternative of accepting some other plan meeting the requirements of *Swann* and *Davis* (A-104).

While the petition for certiorari seeks review of the Fourth Circuit decision of June 10, 1971, the board has attempted to support its arguments by reference to subsequent proceedings in the district court culminating in an order of the district court of July 26, 1971 (A-110 to A-115) directing implementation of a revised proposal presented by the school board (A-116 to A-144). However, the school board did not take any appeal from the order of the district court of July 26, 1971. Instead, the board presented an application to the Chief Justice for a stay of the district court order on August 23, 1971, pending certiorari. The stay application was denied with an opinion by the Chief Justice on August 31, 1971. *Winston-Salem/Forsyth County Board of Ed.* v. *Scott*, Oct. Term, 1971, No. 71-274, August 31, 1971.

Reasons Why the Writ Should Not Be Granted

Respondents respectfully suggest that the case does not present an appropriate occasion for the exercise of the certiorari jurisdiction.

1. The decision of the court of appeals is limited and narrow. It virtually tracks the appropriate language of this Court's decisions in *Swann* and *Davis* and directs recon-

sideration and the preparation of new plans in light of this Court's governing decisions in those cases. This was entirely appropriate, especially since admittedly the district court's opinion under review had been guided by the Fourth Circuit's 1970 decision in *Swann*. The petition for certiorari argues from the premise that the district court had concluded in 1970 that the system was unitary (Petition for Certiorari, p. 6). This premise is incorrect, as we have demonstrated in the Statement, *supra*, by quotation from the district court conclusions of law (A-66 to A-67). The court's conclusion was that "*Except in the area of pupil composition*, the Board's plan effects a unitary system" (A-67, emphasis added).

The district court justified its decision to permit twelve all-black schools to remain in the system by reference to the "reasonableness" doctrine enunciated by the Fourth Circuit in *Swann* in May, 1970:

> 2. Under the plan of operation submitted by the Board for the 1970-71 school year, there will result some all-white and some all-black schools. This fact, however, will not invalidate the plan because the large black residential areas in the City of Winston-Salem are such that *reasonably* all schools cannot be integrated. . . . (A-66; emphasis added.)

The district court then disapproved the Larsen Plan, advocated by plaintiffs as unduly burdensome relying on the precedent of the Fourth Circuit's *Swann* decision, rendered a few weeks earlier, which had disapproved a similar elementary school plan in the Charlotte case. Four days later, on June 29, 1970, this Court reinstated the district court plan in *Swann* (399 U.S. 926). And ultimately the Court upheld that plan. *Swann*, *supra*, 402 U.S. 1, 31. In these circumstances, it was entirely appropriate for the Fourth Circuit to remand the case for reconsideration.

2. The Fourth Circuit was also correct in directing that the school board might fashion its plan on the Larsen Plan, and that in any event if the court should approve a plan providing less desegregation "it shall find facts that are thought to make impracticable the achieving of a greater degree of integration, especially if there remain any schools all or predominantly of one race." The Fourth Circuit's conclusion that the Larsen Plan offered a viable method of desegregation was solidly grounded in that court's familiarity with the detailed record in the case (as well as with the record in the Charlotte case involving a comparable plan). The Fourth Circuit's conclusion that any approval of less desegregation than was promised by the Larsen Plan must be accompanied by specific fact-finding was solidly grounded on this Court's decisions in *Swann*, 402 U.S. 1, 25-31, and *Green* v. *County School Board*, 391 U.S. 430, 439.

The school board has asserted that it was compelled to adopt a plan racially balancing every school. The Fourth Circuit decision states no such requirement but merely enforces the presumption against one-race schools announced by this Court's *Swann* decision. The Fourth Circuit indeed even quoted this Court's language from *Swann* that the existence of "some small number of one-race, or virtually one-race, schools within a district is not in and of itself the mark of a system which still practices segregation by law" (A-99 to A-100). We see nothing in the opinion below which supports the proposition that the Fourth Circuit misunderstood the meaning of this Court's decisions in *Swann* and *Davis*.

3. The action of the district court following the Fourth Circuit decision presents no substantial question. Notwithstanding the school board's self-serving declaration that the plan it submitted in response to the decision of the Fourth

Circuit was based on "the required objective of achieving a racial balance in the public schools of Forsyth County," there is nothing in the record which supports the assertion that the courts below made any such requirement. On remand the school board presented the district court with only one proposal and that plan was approved over plaintiffs' objection. The district court chose the board's plan over the Larsen Plan. The board has filed no appeal from the district court's order approving its reluctantly submitted proposal.

The school year opened in September 1971 with the new plan in effect. No report on its operation has yet been filed in the district court, but the board has again filed a motion in the trial court seeking to have the plan withdrawn and permission to revert to the prior segregated pattern. The board's motion is now scheduled for a hearing in the district court. The resistance to desegregation and the litigation continue.

Respectfully submitted,

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